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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 610

JOHN L. SULLIVAN, Tax Commissioner of the State of Connecticut; and GERALD A. LAMB, Treasurer of the State of Connecticut; LOUIS I. GLADSTONE, Comptroller of the State of Connecticut; and ROBERT K. KILLIAN, Attorney General of the State of Connecticut,

Appellants,

v.

UNITED STATES OF AMERICA, ET AL

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Appeal Docketed October 7, 1968

Jurisdiction Noted January 13, 1969

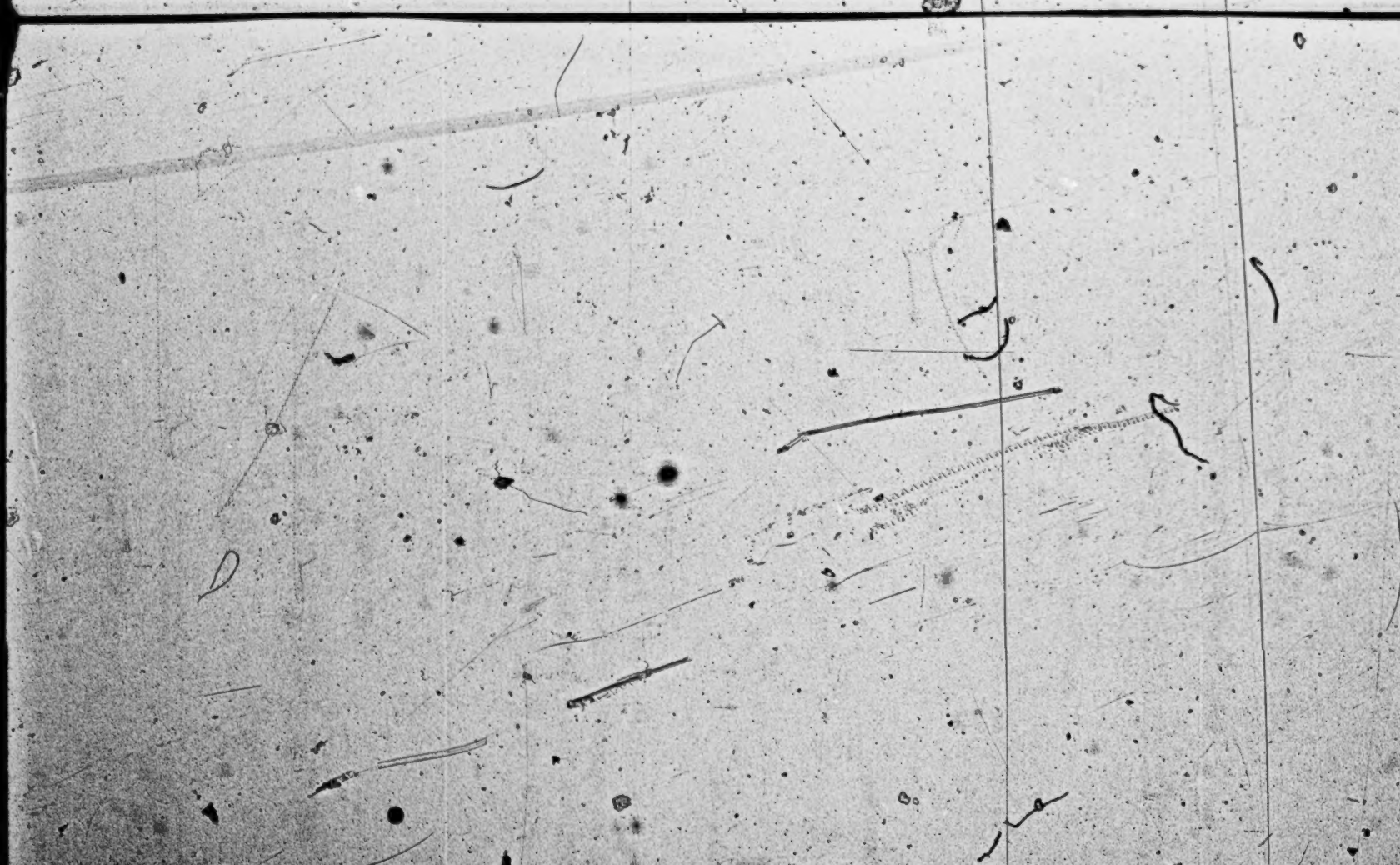
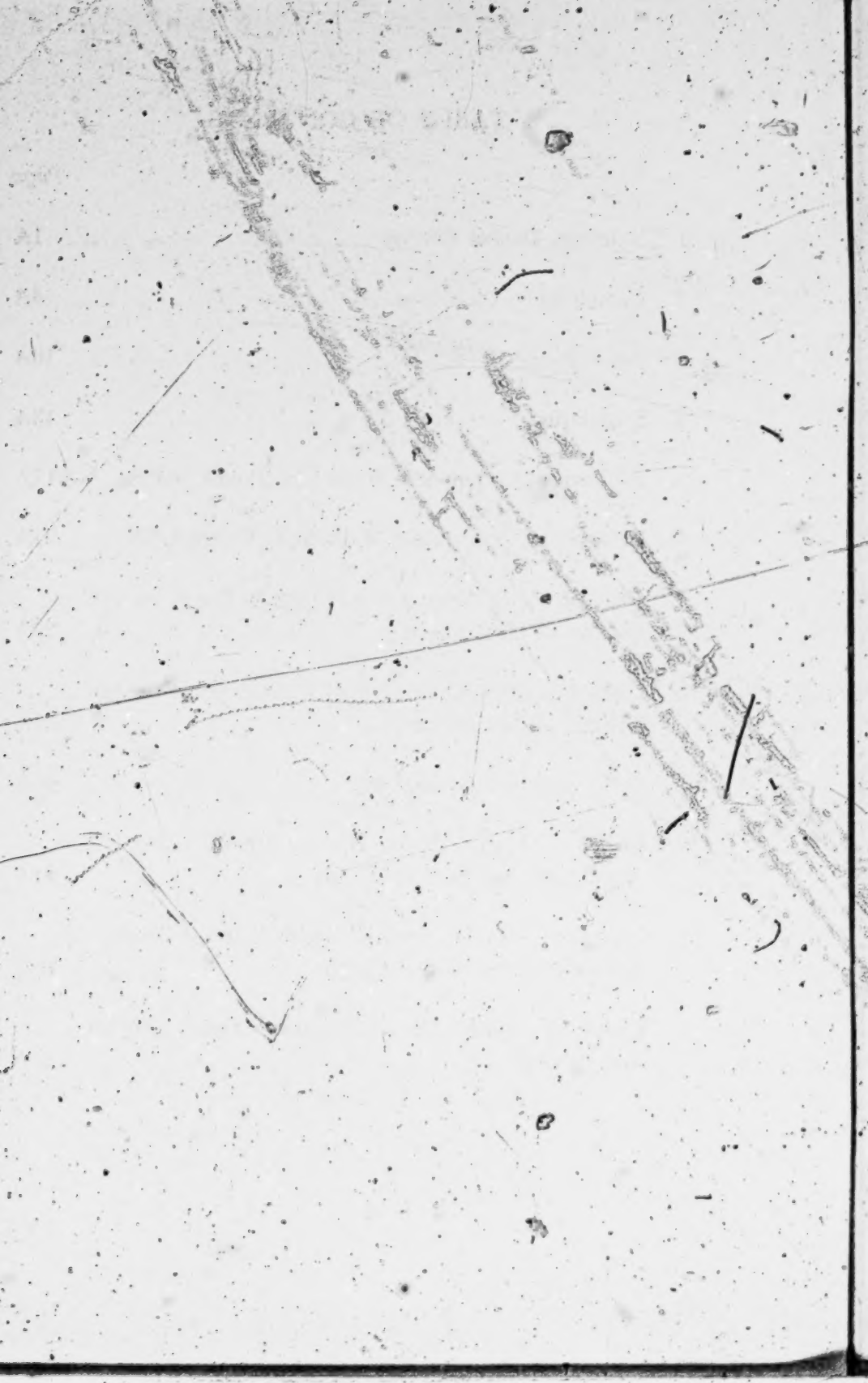


TABLE OF CONTENTS

		Page
1.	Relevant Docket Entries	1A
2.	Complaint	4A
3.	Answer	10A
4.	Stipulation	13A
5.	Affidavit of Commander Jerome W. Roloff, USN	17A
6.	Affidavit of Commander William L. Foster, USN	21A
7.	Decision of the United States District Court for the District of Connecticut	28A
8.	Judgment of the United States District Court for the District of Connecticut	44A
9.	Order Amending Judgment	45A
10.	Decision of the United States Circuit Court of Appeals for the Second Circuit	47A
11.	Judgment of the United States Circuit Court of Appeals for the Second Circuit	60A
12.	Order of United States Supreme Court Noting Jurisdiction	61A



JOHN L. SULLIVAN, Tax Commissioner of the State of Connecticut; and GERALD A. LAMB, Treasurer of the State of Connecticut; LOUIS I. GLADSTONE, Comptroller of the State of Connecticut; and ROBERT K. KILLIAN, Attorney General of the State of Connecticut,

Appellants,

v.

UNITED STATES OF AMERICA, ET AL

Appellees.

Relevant Docket Entries

* * * *

1967

4/21 Complaint filed.

" Motion for Preliminary Injunction, Notice of Motion, Affidavit of Kent J. Carroll, Commander, U.S. Navy, and Brief in Support of Motion for Temporary Injunction, filed.

* * * *

5/ 2 Motion to Dismiss for Lack of Jurisdiction Under Rule 12(b) and Notice of Motion, filed by defendants.

* * * *

5/ 8 Plaintiffs' Motion for Preliminary Injunction "over to June 5th at 2:00 P.M."

" Hearing on Defendant's (Harold M. Mulvey) Motion to Dismiss for Lack of Jurisdiction Under Rule 12(b). * * * Decision reserved on motion to Dismiss. Blumenfeld, J. * * *

* * * *

5/19 Answer, filed by Defendants.

5/29 Defendant's Brief, filed.

" Motion for Summary Judgment, Notice of Motion, Affidavits and Stipulation, filed by Plaintiffs.

* * * *

5/31 Affidavit of George T. Borrows, filed by Plaintiff.

" Affidavit of Clyde H. Shaffer, filed by Plaintiff.

6/ 5 Affidavit of John L. Sullivan, Tax Commissioner, filed.

" Affidavit of Thomas J. Ingram, III, Commander, Supply Corps, U.S.N., filed.

" Hearing on (1) Plaintiffs' Motion for Preliminary Injunction; (2) Plaintiffs' Motion for Summary Judgment. * * * Affidavit of William L. Foster, filed. * * * Decision Reserved on both motions. Blumenfeld, J.

6/28 Memorandum of Decision entered at Htfd. The Court DECREES and ADJUDGES that judgment enter declaring that each and all assessments and collections of sales or use taxes which defendants have made and are making in respect of personal property purchased or used in Connecticut by Schuman and other persons, who, at the time as of which the tax was or is levied, were or are members of the Armed Forces of the United States on active duty and residents of or domiciled in states other than Connecticut and absent from such states solely by reason of compliance with military or naval orders, were and are in contravention of the Soldiers' and Sailors' Civil Relief Act of 1940. Blumenfeld, J. * * *

6/29 Judgment entered. Ordered that each and all assessments and collections of sales or use taxes which defendants

have made and are making in respect of personal property purchased or used in Connecticut by Schuman and other persons, who, at the time as of which the tax was or is levied, were or are members of the Armed Forces of the United States on active duty and residents of or domiciled in states other than Connecticut and absent from such states solely by reason of compliance with military or naval orders, were and are in contravention of the Soldiers' and Sailors' Civil Relief Act of 1940. * * *

7/12 Motion to Amend Judgment Under Rule 59(e), with Notice of Motion to Amend Judgment Under Rule 59(e), and Affidavit of Clinton B. D. Brown, filed.

9/11 Hearing on Plaintiffs' Motion to Amend Judgment Under Rule 59(e). Decision Reserved. Blumenfeld, J. * * *

* * * *

10/ 3 Stipulation for Entry of Order and Amendment of Judgment, filed by Plaintiff.

" Order entered, amending Judgment * * * Blumenfeld, J. * * *

11/28 Notice of Appeal, to the U.S. Court of Appeals for Second Circuit, filed by Defendants. * * *

1968

7/11 Judgment entered affirming decision of the District Court.

7/30 Notice of Appeal to the Supreme Court of the United States filed by defendants.

8/20 Clerk's certificate.

8/22 Motion to stay issuance of mandate pending appeal granted.

10/ 7 Appeal docketed.

1969

1/13 Jurisdiction noted.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

(Title Omitted in Printing)

COMPLAINT

Plaintiffs United States of America and Lieutenant Stanley D. Schuman, U.S.N., by their attorney, Jon O. Newman, United States Attorney for the District of Connecticut, allege that:

1. Jurisdiction is founded on the United States as a party plaintiff in this action. 28 U.S.C., § 1345.

2. The United States of America is and at all times pertinent hereto was a corporate sovereign and a body politic.

3. The United States has brought this action at the request of the Department of the Navy and under the direction and authorization of the Attorney General of the United States because of its interest, as sovereign, in having Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 U.S. Code Appendix, Section 574), hereinafter called the "Relief Act," properly construed and the benefits thereof accorded to members of its armed forces.

4. Lieutenant Schuman is a commissioned officer in the United States Navy, and is and was, at all times since July, 1960,

a member of the armed forces of the United States on active duty and a resident of and domiciled in the State of Nebraska.

5. This action is brought pursuant to Rule 23, Federal Rules of Civil Procedure, in behalf of every person against or from whom, while a member of the armed forces of the United States on active duty and not a resident of or domiciled in the State of Connecticut, defendants or any of them have assessed or collected or threaten to assess or collect any sales or use tax in respect of his or her personal property not used in or arising from a trade or business.

6. Defendant John L. Sullivan is Tax Commissioner of the State of Connecticut charged by law with the administration of the Education, Welfare and Public Health Tax Act (Chapter 219, Connecticut General Statutes, Revision of 1958, as amended), commonly known as the "Sales and Use Tax Act" and hereinafter called the "Tax Act," under which he assessed and collected and threatens to assess and collect the taxes herein sought to be refunded and restrained.

7. Defendant Gerald A. Lamb is Treasurer of the State of Connecticut authorized by law to collect taxes levied under the Tax Act and to pay all tax refunds authorized by law, upon order of defendant Comptroller, out of any funds appropriated for the purpose.

8. Defendant Louis I. Gladstone is Comptroller of the State of Connecticut authorized by law to collect taxes levied under the Tax Act and to draw orders upon defendant Treasurer for the payment of tax refunds authorized by law.

9. Defendant Harold M. Mulvey is Attorney General of the State of Connecticut authorized by law to collect delinquent taxes levied under the Tax Act by civil action or foreclosure and to advise heads of executive departments, including defendant Tax Commissioner, upon any question of law submitted to him.

10. On or about June 6, 1966, defendant Tax Commissioner made an assessment under the Tax Act which purported to impose upon plaintiff Schuman a use tax in respect of certain tangible personal property physically located in the State of Connecticut which was not used in and did not arise from a trade or business, to wit, a boat purchased by Schuman in Connecticut for use in that state as a pleasure craft. Said assessment was in the amount of $21 tax and 53c interest, or a total of $21.53. Schuman paid said assessment involuntarily and under protest on August 15, 1966.

11. Prior to the assessment of said tax and while defendant Tax Commissioner was threatening to impose same, plaintiff Schuman, in letters to defendant's Tax Department dated April 6, 1966, and May 11, 1966, claimed exemption from said tax by reason of the Relief Act.

12. Defendant Tax Commissioner, acting through his subordinates, denied Schuman's claim of exemption in letters dated May 27, 1966, and June 20, 1966, on the ground that the exemption provided in the Relief Act applied only to personal property taxes and not to sales and use taxes levied under the Tax Act.

13. Following Schuman's payment under protest, plaintiff United States, acting through its Judge Advocate General of the Navy, informed defendant Attorney General by letter of August 30, 1966, of its view that the Relief Act exempts Schuman and others similarly situated from the tax assessed against him and suggested that defendant so advise the Tax Department.

14. Replying on September 7, 1966, defendant Attorney General declined and refused to advise the Tax Department to change its position, basing his refusal on the ground that the Relief Act was intended to apply solely to personal property taxes and not to sales and use taxes levied under the Tax Act. The Judge Advocate General of the Navy by letter of September 27, 1966, again urged defendant to reconsider his position but de-

fendant Attorney General persisted in his refusal to advise the Tax Department to afford exemption from taxes imposed by the Tax Act.

15. The imposition against Schuman or any other member of the class of any sales or use tax in respect of personal property not used in or arising from a trade or business is forbidden by the Relief Act which provides that, for the purposes of taxation in respect of personal property or the use thereof, such personal property of a nonresident serviceman shall not be deemed to be located or present in the state. The effect of this provision is to withdraw the jurisdictional basis for imposition of a sales or use tax in respect of such property, even though the property is physically present in the state at the time of its purchase or use.

16. In addition to plaintiff Schuman, there have been, are and will be for some time hereafter many other members of the class purchasing or using tangible personal property physically located in the State of Connecticut with respect to which defendants have assessed or collected or threaten to assess or collect sales and use taxes although at the time as of which the tax was or is levied, such persons were or are members of the armed forces domiciled in and residents of states other than Connecticut and absent from such states solely by reason of compliance with military or naval orders and entitled to exemption under the Relief Act from any taxation in respect of such property because not used in or arising from a trade or business.

17. Plaintiff Schuman's claims are typical of the claims of the class and involve a federal question of law common to the class. The class is so numerous that joinder of all members is impracticable, but plaintiffs will fairly and adequately protect the interests of the class.

18. The prosecution of separate actions by individual members of the class would create a risk of inconsistent adjudications which would establish incompatible standards of conduct for de-

fendants or adjudications which, as a practical matter, would be dispositive of the interests of other members not parties thereto or substantially impair or impede their ability to protect their interests.

19. In threatening to impose and imposing upon Schuman a tax under the Tax Act, notwithstanding the prohibition in the Relief Act against imposition of such a tax upon any member of Schuman's class, and in refusing to alter their position and threatening to impose and continue imposing such taxes on Schuman and others similarly situated, defendants have acted upon grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

20. The amounts at stake for individual members of the class are so small that separate suits would be impracticable and the common federal question affecting all the members of the class predominates over any questions affecting only individual members. These considerations together with the desirability of avoiding a multiplicity of actions which would impose an undue burden on the parties and the courts, render a class action superior to other available methods for the fair and efficient adjudication of the controversy.

21. Plaintiffs and other members of the class will suffer irreparable injury unless defendants are restrained, during the pendency of this action and permanently thereafter, from assessing and collecting any sales or use taxes with respect to personal property not used in or arising from a trade or business, purchased or used by Schuman or other members of the armed forces of the United States on active duty who, at the time as of which the tax was or is levied, were or are domiciled or resident outside of the State of Connecticut and absent from their residence or domicile solely by reason of compliance with military or naval orders in that, among other things, many members of the class will be unable, as a practical matter, to secure recovery after pay-

ment under protest of the taxes herein sought to be restrained because of the impracticability of separate suits, changes of duty station and other causes and, in any event, plaintiff United States, plaintiff Schuman and other members of the class will thereby be subjected to the expense and inconvenience of multiple suits in seeking recovery of or defending against such taxes and the morale and well-being of the class as members of the armed forces will be impaired.

WHEREFORE, the plaintiffs pray judgment:

1. Decreeing and adjudging that each and all assessments and collections of sales or use taxes which defendants have made and are making in respect of personal property purchased or used in Connecticut by Schuman and other persons who, at the time as of which the tax was or is levied, were or are members of the armed forces of the United States on active duty and residents of or domiciled in states other than Connecticut and absent from such states solely by reason of compliance with military or naval orders, were and are in contravention of the Soldiers' and Sailors' Civil Relief Act and, therefore, illegal, void and of no effect; and

2. Restraining and enjoining defendants and all persons acting under their authority, during the pendency of this action and permanently thereafter, from making further assessments or collections of sales or use taxes in respect of personal property not used in or arising from a trade or business, purchased or used by members of the armed forces of the United States who, at the time as of which the tax was or is levied, were or are on active duty and resident and domiciled in states other than Connecticut and absent from such states solely by reason of compliance with military or naval orders; and

3. Directing defendants to pay to plaintiff Schuman the sum of $21.53 and such additional sums as, at the time of entry of final judgment, it shall have been determined that Schuman has at any time paid as sales or use taxes collected by any defend-

ant in contravention of the Soldiers' and Sailors' Civil Relief Act, together with interest on all such sums to the date of judgment; and

4. Directing defendants to pay to each and all other members of the class such sums as it may then or thereafter be determined they have at any time paid as sales or use taxes collected by any defendant in contravention of the Soldiers' and Sailors' Civil Relief Act, together with interest on all such sums; and

5. Granting plaintiffs and members of the class such other and further relief as may be just and proper in the premises, together with their costs and disbursements.

(Signatures of Counsel and Affidavit omitted in Printing)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

(Title Omitted in Printing)

ANSWER

1. Paragraphs 2, 3, 4, 6, 9, 11, 12, 13 and 14 of the complaint are admitted.

2. Paragraphs 1, 15, 19, and 21 of the complaint are denied.

3. So much of Paragraph 5 as alleges that this action is brought pursuant to Rule 23, Federal Rules of Civil Procedure, in behalf of every person against or from whom, while a member of the armed forces of the United States on active duty and not a resident of or domiciled in the State of Connecticut, the defendant State Tax Commissioner has assessed or collected or threatens to assess or collect sales or use tax with respect to the purchase of personal property by such person not used in or arising from

a trade or business is admitted. The implication in said Paragraph 5 that a purchase transaction is not a prerequisite to the imposition of sales or use taxes is denied.

4. So much of Paragraph 7 as alleges that defendant, Gerald A. Lamb, is Treasurer of the State of Connecticut authorized by law to pay all tax refunds authorized by law upon order of the defendant Comptroller out of funds appropriated for that purpose is admitted. So much of said Paragraph 7 as alleges that the defendant Treasurer of the State of Connecticut is authorized by law to collect taxes levied under the Tax Act is denied.

5. So much of Paragraph 8 as alleges that defendant, Louis I. Gladstone, is Comptroller of the State of Connecticut authorized by law to draw orders upon defendant Treasurer for the payment of tax refunds authorized by law is admitted. So much of said Paragraph 8 as alleges that the defendant Comptroller of the State of Connecticut is authorized by law to collect taxes levied under the Tax Act is denied.

6. So much of Paragraph 10 as alleges that on or about June 6, 1966 the defendant Tax Commissioner made an assessment under the Tax Act which imposed upon plaintiff Schuman a use tax with respect to the purchase of a boat within Connecticut for use in Connecticut as a pleasure craft, and that said assessment was in the amount of $21 tax and 53c interest, or a total of $21.53, which assessment was involuntarily paid by Schuman under protest on August 15, 1966, is admitted. The defendants are without knowledge or information sufficient to form a belief as to whether plaintiff Schuman will use the boat exclusively as a pleasure craft and not in connection with a trade or business, and leave the plaintiffs to their proof.

7. So much of Paragraph 16 as alleges that in addition to plaintiff Schuman there have been, are, and will be for some time hereafter many other members of the class purchasing for use tangible personal property with respect to the purchase for

use of which in the State of Connecticut the defendant State Tax Commissioner has assessed or collected or threatens to assess or collect sales and use taxes and that such persons at the time as of which the tax was or is levied were or are members of the armed forces domiciled in and residents of States other than Connecticut and absent from such States solely by reason of compliance with military or naval orders is admitted; the remaining allegations are denied.

8. As to the allegations in Paragraphs 17, 18, and 20, the defendants are without knowledge or information sufficient to form a belief, and leave the plaintiffs to their proof.

AFFIRMATIVE DEFENSES

First Defense.

28 U.S.C.A. Section 1341 prohibits the issuance by this district court of the injunctive relief sought by the plaintiffs since the General Statutes of the State of Connecticut provide a plain, speedy and efficient remedy in the State courts. (Section 12-422.)

Second Defense.

Section 12-425(2), Connecticut General Statutes, limits the time within which claims for refund of taxes may be filed with the defendant Tax Commissioner. Although plaintiff Schuman is not estopped from filing a claim for refund of tax, many members of Schuman's class are estopped by the statutory limitation from filing claims for refund of taxes paid since the Tax Act became effective on July 1, 1947.

Third Defense.

Although plaintiff Schuman paid the tax assessment involuntarily and under protest, many members of the class paid sales and/or use taxes voluntarily and without protest and are, therefore, not entitled to seek recovery of said taxes.

Fourth Defense.

The United States of America, as representative of the class in the institution of this action on behalf of the members of the class, is guilty of laches in failing to assert the right to refund of sales and/or use taxes previously paid by members of the class for an unreasonable and unexplained length of time under circumstances which are prejudicial to the State of Connecticut.

(Signatures of Counsel omitted in Printing)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

(Title Omitted in Printing)

STIPULATION

The parties to this action, by their undersigned attorneys, hereby stipulate and agree:

(a) this stipulation shall be received in evidence on the hearing herein now scheduled to be held June 5, 1967; and

(b) all facts stated in paragraphs 1 through 12 below shall be deemed true and correct for the purposes of said hearing and any other hearing or trial herein; and

(c) on any hearing and on the trial of this action, any party may offer any further evidence not inconsistent with any facts below stated; and

(d) each party reserves the right to object to the admissibility, on any appropriate ground, of any further evidence offered by any other party.

1. The United States has brought this action in behalf of certain present and former members of its armed forces be-

cause of its interest, as sovereign, in having Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 U.S. Code Appendix, Section 574), properly construed and its benefits accorded members of the armed forces. Lieutenant Stanley D. Schuman, U.S.N. has joined as a plaintiff in his own behalf and as a member and representative of the class of servicemen for whose benefit the suit is brought. The class includes every person with respect to whose purchase for use of personal property not used in or arising from a trade or business, while a member of the armed forces on active duty and not domiciled in Connecticut, the defendants have assessed or collected or now or hereafter threaten or attempt to assess or collect any taxes under Sections 12-408, 12-411 or 12-431 of Chapter 219 of the General Statutes of Connecticut, Revision of 1958, as amended, commonly known as the Sales and Use Tax Act, and hereinafter referred to as the Tax Act.

2. The defendants are the duly elected or appointed officials of the State of Connecticut charged by law with the performance of duties incident to the assessment, collection and refund of taxes imposed under the Tax Act.

3. At all times here pertinent, plaintiff Lieutenant Stanley D. Schuman, U.S.N., was a member of the armed forces on active duty, domiciled in Nebraska and present in Connecticut in compliance with military orders.

4. In August, 1965, at Groton, Connecticut, Schuman bought a used outboard motorboat for $600 for his personal use as a pleasure craft. Schuman has used said outboard motorboat in Connecticut but did not and does not intend to and has not used said boat in any trade or business. The purchase was made from an individual not engaged in business as a dealer or retailer of boats.

5. On June 6, 1966, defendant Tax Commissioner assessed a tax against Schuman under Section 12-431 of the Tax Act, by

reason of his said purchase for use of said boat. The assessment was in the amount of $21 tax and 53¢ interest. Schuman paid the assessment involuntarily and under protest on August 15, 1966.

6. Commander Kent J. Carroll, U.S.N., a member of the class, at all times here pertinent was, and is, a member of the armed forces on active duty, domiciled in Michigan and present in Connecticut in compliance with military orders.

7. In May, 1966, at East Lyme, Connecticut, Carroll bought a used 1963 Luhrs inboard motorboat for $4900 for his personal use as a pleasure craft. Carroll has used said inboard motorboat in Connecticut but did not and does not intend to and has not used the boat in any trade or business. The purchase was made from an individual not engaged in business as a dealer or retailer of boats.

8. Defendant Tax Commissioner has demanded payment from Carroll of a tax under Section 12-431 of the Tax Act by reason of his said purchase for use of said boat. Carroll denies liability for and refuses to pay any such tax on the ground that he is a nonresident serviceman exempt from such taxes under the Soldiers' and Sailors' Civil Relief Act. Defendant threatens to assess and collect such a tax in the amount of $171.50.

9. Lieutenant Commander Clyde H. Shaffer, U.S.N., a member of the class, at all times here pertinent was, and is, a member of the armed forces on active duty, domiciled in Pennsylvania and present in Connecticut in compliance with military orders.

10. On January 10, 1967, at Groton, Connecticut, Shaffer purchased a 1967 Volkswagen automobile for $1,745 for his personal use and pleasure. Shaffer has used said Volkswagen automobile in Connecticut but did not and does not intend to and has not used the vehicle in any trade or business. The purchase was made from Weil Motors, Inc., a dealer and retailer of auto-

mobiles. Said retailer collected from Shaffer the sum of $61.08 as a tax on said purchase under the purported authority of Section 12-408(2) of the Tax Act and paid to defendant Tax Commissioner the amount of $61.08 in purported compliance with Section 12-414 of the Tax Act.

11. Most of the day-to-day purchases of tangible personal property, which includes food, clothing, toilet articles and other personal items, made by servicemen in Connecticut are made from military exchanges, and commissaries operated by the armed services on military installations.

12. Sales made by military exchanges and commissaries operated by the armed services on military installations to servicemen are not subject to any tax under the Tax Act.

DATED: May 24, 1967.

JON O. NEWMAN
United States Attorney

By CLINTON B. D. BROWN
Attorney for Plaintiffs

HAROLD M. MULVEY
Attorney General

By F. MICHAEL AHERN
Assistant Attorney General
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

(Title Omitted in Printing)

AFFIDAVIT

STATE OF CONNECTICUT)
) ss
COUNTY OF NEW LONDON)

JEROME W. ROLOFF, being first duly sworn, deposes and says:

1. I am a commissioned officer in the armed forces of the United States with the rank of Commander, Civil Engineering Corps, United States Navy, and I have served continuously on active duty since my entry into naval service in 1942.

2. I am, and at all times here relevant have been, a resident of and domiciled in Waterford, Wisconsin.

3. I am attached to Naval Submarine Base New London, Groton, Connecticut, where I reported for duty on August 11, 1966.

4. My temporary residence or place of abode while serving in Connecticut are the public quarters located at 46 Cavalla Court aboard Naval Submarine Base New London, Groton, Connecticut. My presence in Connecticut is and has been solely to comply with official naval orders.

5. On or about August 2, 1966, I purchased a 1963 Pontiac motor vehicle for about $1800.00 in Merritt Island, Florida. At the time the before described motor vehicle was purchased, I was the Deputy Officer in Charge of Construction and attached to Patrick Air Force Base at Cocoa Beach, Florida, by official naval orders.

6. The before described vehicle was introduced into the State of Connecticut as a part of my personal effects, and has been used since its purchase for my personal use and pleasure. The before described vehicle is not now and has never been used in trade or business since purchased by me.

7. As a condition to my registering the before described vehicle in the State of Connecticut, I was required to pay (and did, in fact, pay) the difference between the tax imposed under the Connecticut Education Welfare and Public Health Tax Act of 3-½% and the Florida Sales Tax of 2%, which difference was the sum of $27.38. The tax on the before described vehicle was paid to the State of Connecticut, State Tax Department, at its New London office on May 16, 1967.

8. Attached hereto and made a part hereof are true copies of (a) a letter from the Department of Motor Vehicles, State of Florida, and (b) a receipt from the State Tax Department, State of Connecticut.

WHEREFORE, deponent as a member of the class represented in the above-entitled action requests that defendants return the tax collected.

/s/ Jerome W. Roloff
JEROME W. ROLOFF
Commander, Civil Engineering Corps, U.S. Navy

Subscribed and sworn to before me this 22nd day of May, 1967.

/s/ Richard C. Andrews

NOTARY PUBLIC
My commission expires 1 April 1971

CONFIRMED COPY

19A

STATE OF FLORIDA

DEPARTMENT OF MOTOR VEHICLES

107 WEST GAINES STREET • TALLAHASSEE 32304

ARCH LIVINGSTON
DIRECTOR

May 8, 1967

J. W. Roloff, Commander, CEC, USN
Box 400
Naval Submarine Base New London
Groton, Connecticut 06340

Dear Sir:

In reference to your letter of May 4, 1967, our records indicate Florida Title #1094710, covering a 1963 Pontiac Coupe, Serial #963D10608, was issued in the name of Jerome W. Roloff, 95 North Poinciana Drive, Satelite Beach, Florida, on August 22, 1966, showing no lien.

The records indicate that Merritt Island Garage, Inc, PO Box 187, Merritt Island, the dealer from whom you purchased the vehicle, collected Florida sales tax in the amount of $36.50 on this transaction to you. We are unable to furnish you with a receipt showing proof that you paid the sales tax. It will be necessary that you contact Mr. W. D. Mayo, Deputy Director, Florida Revenue Commission, Carlton Building, Tallahassee, Florida, for the evidence of payment of tax.

Very truly yours,

ARCH LIVINGSTON, DIRECTOR

By: Anthony P. Prete

Anthony P. Prete
Assistant Title-Lien Supervisor

APP/mg

Certified to be a True Copy
/s/ Jerome W. Roloff

20A

TAXPAYER'S COPY

State of Connecticut

STATE TAX DEPARTMENT

EDUCATION, WELFARE, AND PUBLIC HEALTH TAX ACT

PERMIT NO.			419146
BRANCH OFFICE	New London		DATE 5-17-67
RECEIVED OF	James E. Poli II		
ADDRESS	46 Cavalla Ct.		
CITY OR TOWN	Groton Conn		
CASH ✓	CHECK	M. O.	AMOUNT 2.00

NAME OF BANK OR POST OFFICE

REMARKS 1963 Pontiac 2 dr. Sedan

ON MAY 10 1967

RECEIVED BY C. M. York

BU-F-232 (REVISION)

Certified to be a True Copy

/s/ Jeanne W. Roloff

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

(Title Omitted in Printing)

AFFIDAVIT

WILLIAM L. FOSTER, being first duly sworn, deposes and says:

1. I am a commissioned officer in the Armed Forces of the United States serving with the rank of Commander, United States Navy, and I have served continuously with the United States Navy since my entry therein in 1940.

2. I am now and during all times pertinent herein have been domiciled in and a legal resident of McKinney, Texas.

3. I am presently serving as Commander Submarine Division Eighty-One, homeported in Groton, Connecticut, but on November 6, 1963, I was attached to the Staff of Commander Submarine Flotilla Two, located at the Naval Submarine Base New London, Groton, Connecticut.

4. On November 6, 1963, I purchased a 1964 Volkswagen sedan from Weil Motors, Inc., Groton, Connecticut.

5. Prior to delivery of the aforedescribed vehicle, and during negotiations for its purchase, I inquired as to registration and payment of taxes to the State of Texas. I was informed that inasmuch as I was a Texas resident I was required to pay a sales tax to the State of Texas prior to registration in that state of my newly acquired motor vehicle. The tax I was required to pay to the State of Connecticut was not credited against the tax due to the State of Texas.

6. Prior to delivery of the aforedescribed vehicle and while I was negotiating for its purchase, I telephoned the Connecticut State Department of Motor Vehicles, Wethersfield, Connecticut, and was referred to its Legal Department. I was informed that I

would be required to pay a tax of 3-½% to the State of Connecticut, but in view of the prospective registration of the vehicle I was about to acquire in the State of Texas, the 3-½% tax would not be a sales tax but would be a use tax. The tax which I would be required to pay to the State of Texas was not credited to the tax of 3-½% levied by the State of Connecticut.

7. I paid a sales tax to the State of Texas in the sum of $35.92 as a preliminary to registration. I paid a tax of $62.85 to the State of Connecticut, which I assumed, based upon my conversation with the Department of Motor Vehicles, to be a use tax.

8. Attached hereto and made a part of this affidavit are copies of the following documents:

(1) State Comptroller's Receipt/Tax Collector's Receipt No. 715613 covering sales or use tax of $35.92 paid to the State of Texas;

(2) Affiiant's letter to Tax Assessor-Collector, Texas Highway Department, dated 28 October 1963, with reply thereto on the reverse side;

(3) Affiant's letter to Tax Assessor-Collector, Texas Highway Department, dated 5 November 1963;

(4) Certified copy of original Bill of Sale on file at Weil Motors, Inc., Groton, Connecticut, indicating sales tax in the amount of $62.85 paid by the affiant.

/s/ William L. Foster
WILLIAM L. FOSTER
Commander, United States Navy

Subscribed and sworn to before me this 2nd day of June, 1967.

/s/ Richard C. Andrews
NOTARY PUBLIC
My commission expires: 1 April 1971

STATE COMPTROLLER'S RECEIPT

For Motor Vehicle Sales, Use, Gift, or Transfer Tax

Name of Seller: Weil Motors Inc.,

CASH, CREDIT and/or EXCHANGE PLUS TRADE IN TOTAL VALUE	1795.85
LESS TRADE IN	
NET VALUE	1795.85
AMOUNT OF SALE OR USE TAX	35.92
EVEN EXCHANGE TAX NEW RESIDENT TAX GIFT TAX	

HOLD HERE FOR FIRST SNAP

Received amount as shown hereon, in payment of Motor Vehicle Sales, Use, Gift, New Resident Tax or Even Exchange as per article 6.01 et al on the motor vehicle described hereon.
Address communications regarding this tax to State Comptroller, Austin, Texas.

TAX COLLECTOR'S RECEIPT FOR TITLE APPLICATION

Receipt is hereby acknowledged of fee of 75 cents and application for ORIGINAL - CORRECTED Certificate of Title

No. E715613

By Owner: William L. Foster, Address: New Brook St., Groton, Conn.,

Year	Make	Body Style	Motor or Vehicle Identification No.
1964	Volkswagen	2 Dr	580 5711

Surrendered Title No.: Mfg., Ct

License No.: VM 4853

1st Lien Date	Amount	Name and Address of First Lien Holder
None		

2nd Lien Date	Amount	Name and Address of Second Lien Holder
None		

Date Issued: 11/7/63

County: COLLIN

ORIGINAL—To Applicant if no lien.
To Lien Holder if lien.

Mrs Doyle Nelson, fmcf
Tax Assessor-Collector — Deputy

TEXAS HIGHWAY DEPARTMENT

Form 31

IMPORTANT—Address any inquiry regarding your Certificate of Title to Texas Highway Department, Motor Vehicle Division, 40th and Jackson Avenue, Austin 14, Texas. ENCLOSE THIS RECEIPT.

23A

28 October 1963

Dear Mrs. Nelson,

I am buying a new Volkswagen Sedan this week, and I want to get Texas plates for it.

I would like to have any application for a Texas certificate of title, registration forms, etc.

I already have one car registered in Texas, but I can't remember all the details. I am paying $1795.85 for the Volkswagen, and I am paying $62.85 Connecticut Sales Tax. Do I have to pay any additional tax to Texas in order to register the car there?

Please send me all the details plus required forms.

Sincerely,

William L. Nelson
Cdr., U.S. Navy

11200

In reply to your letter - first, the registration, we register by weight, not knowing what your car weighs I am unable to say what the cost of registration would be, second, there is a 2% sales tax on what you paid for the car, and third, the Application for a Title is 75¢. I am enclosing the necessary papers, the Application of Title and also, the Tax Affidavit. Thanks- Also the cost for mailing your License plates

1745.85
.02
35,91 70

Sales Tax = 35.92
Registration Fee = 2.18
Application for title .75
Postage .50
39.35

MT 5762

	Wt.	Cost.
Registration - Volkswagon	1609	5.24
" - Cadillac	4300	22.70
		27.94

5 November 1963

Mr. Dayl Nelson
Assessor and Collector of Taxes
Collin Co Bldg
Mckinney, Texas.

Dear Mrs. Nelson,

I enclosing Registration fee, Application for Title with fee, postage fee, and evidence to establish ownership. The fees are.

Sales Tax; 2% of $1795.25	=	$35.92
Registration; wt. 1643 lbs (now)	=	$ 2.12
Application for Title		$ .75
Postage		$ .50
Total		$39.35

Please mail license plates and Title to: COR. WILLIAM L. FOSTER, USN
New Brook St.
Groton, Conn.

Sincerely,
William L. Foster
Cdr. USN.

CAR INVOICE

VOLKSWAGEN SALES & SERVICE

WEIL MOTORS, Inc.
Long Hill Road Hilltop 5-7441
GROTON, CONN.

Stock # N 3196

SOLD TO William L. Foster
ADDRESS New Brook Street
Groton, Conn

DATE November 6, 1963
SALESMAN Mr. Carruthers

MAKE	YEAR	MODEL	BODY STYLE	NEW OR USED	KEY NO.
Volkswagen	1964	113	2 dr. Sedan	New	SU 14

SERIAL NO.	MOTOR No.	ACCESSORIES & EXTRAS
580 5711	802 4455	Sea Blue

INSURANCE COVERAGE INCLUDES
☐ FIRE AND THEFT ☐ PUBLIC LIABILITY — AMT.
☐ COLLISION — AMT. DEDUCT. ☐ PROPERTY DAMAGE — AMT.

OPTIONAL EQUIPMENT AND ACCESSORIES

GROUP	DESCRIPTION	PRICE

NEW CAR — FACTORY INSTALLED:
This is to certify that public 85-506 price sticker was attached to the new motor vehicle described above at the time of delivery.

William L. Foster

Cert. of Origin 11-12-63 E85

NEW CAR — DEALER INSTALLED:
County of New London SS: Groton, November 6, 1963
State of Connecticut
I hereby certify that the above and foregoing is a true copy of the original Bill of Sale as on file at Weil Motors, Inc.

In witness whereof, I have hereunto set my hand and the seal.

Notary

MY COMMISSION EXPIRES APRIL 1, 1966

USED CAR — TRADE-IN:

NAME OF FINANCE COMPANY:

PRICE OF CAR	1651.00
TRANSPORTATION CHARGE	
PREP. & CONDITIONING	20.00
	62.85
SALES TAX	
DELIVERED PRICE	1733.85
EXTRAS:	
OPTIONAL EQUIP. & ACC.:	
FACTORY INSTALLED	
DEALER INSTALLED	
Undercoat	30.00
Radio	75.00
SV Mirror	5.95
2 Seat Belts	13.90
TOTAL CASH PRICE	1858.70
COST OF FINANCING	
COST OF INSURANCE	
TOTAL TIME PRICE	1858.70
SETTLEMENT:	
DEPOSIT	50.00
CASH ON DELIVERY	1808.70
USED CAR:	None
YEAR / MAKE	
MODEL / BODY	
SERIAL NO.	
MOTOR NO.	
PAYMENTS:	
____ AT $ ____	
____ AT $ ____	
TOTAL	1858.70

THE PURCHASER AUTHORIZES THE DEALER TO INSTALL THE OPTIONAL EQUIPMENT, ACCESSORIES AND SERVICES AS NOW SPECIFIED, AND TO PLACE THE ORDINANCE AS HEREIN SPECIFIED. ACKNOWLEDGES RECEIPT OF THIS CAR AND A COPY OF THIS CONTRACT.

PURCHASER'S SIGNATURE

ALWAYS SHOW SERIAL, MOTOR AND KEY NUMBER

8

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

— VS. —

JOHN L. SULLIVAN, TAX COMMISSIONER OF THE STATE OF CONNECTICUT, Et Al

CIVIL No. 11,928

MEMORANDUM OF DECISION

This is a suit by the United States and Lieutenant Stanley D. Schuman, U.S.N., on behalf of all nonresident or nondomiciliary military personnel now stationed in Connecticut against tax officials of the State of Connecticut. The Government seeks a judgment declaring that Connecticut's sales and use taxes (Chap. 219, Conn. Gen. Stat. § 12-406- § 12-432, Rev. of 1958, as amended) cannot be collected from nonresident servicemen in respect of property purchased or used by them in Connecticut consistently with the remedial provisions of Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 App. U.S.C. § 574 (1964)). A refund of all sums heretofore paid to Connecticut on account of said tax by military personnel who were neither residents nor domiciliaries of this state is also sought.

By agreement of counsel, the question of jurisdiction and the application for a preliminary injunction were postponed until the hearing on the merits.

I. Jurisdiction

The defendants, John L. Sullivan and others, public officials of the State of Connecticut, moved to dismiss the suit against them on the ground that Congress has denied to a federal court jurisdiction of such a case. The specific ground is

that this suit is barred by act of Congress, 28 U.S.C. § 1341, which provides:

> "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such state."

This section grew out of the act of August 21, 1937 (Chap. 726, 50 Stat. 738) which generally withdrew jurisdiction from federal district courts to enjoin the collection of a state tax. See 1A J. Moore, Federal Practice ¶0.207, p. 2283 (1959 ed.).

Assuming that § 1341 is applicable, whether "a plain, speedy and efficient remedy may be had in the courts of [this] state" in the instant case is a difficult and close question. *Compare Hillsborough Township* v. *Cromwell,* 326 U.S. 620 (1946) *with Spector Motor Serv., Inc.* v. *McLaughlin,* 323 U.S. 101 (1944). But the question whether an adequate remedy exists in the state courts is a thicket which need not be entered.

Jurisdiction of this court in the case at bar is based on the fact that the United States is a party plaintiff. 28 U.S.C. § 1345. It is settled law that the right of the United States to sue as plaintiff in a federal district court is not limited by the provisions of § 1341. *Department of Employment* v. *United States,* 385 U.S. 355, 357-58 (1966); *United States* v. *Arlington County,* 326 F. 2d 929, 931 (4th Cir. 1964). The rule in this circuit has long been to the same effect. *United States* v. *Woodworth,* 170 F. 2d 1019 (2d Cir. 1948) (Frank, C. J.); *United States* v. *City of New York,* 175 F. 2d 75 (2d Cir.), *cert. denied,* 338 U.S. 885 (1949).

The defendants have attempted to distinguish the *Department of Employment* case from the instant action on the ground that the proprietary interest of the United States in its instrumentalities (e.g., the Red Cross as in *Department of*

Employment) is more direct and immediate than the interest of the Government as representative of the class of its military personnel. In deciding that there was sufficient interest in the United States to sue, the Supreme Court relied upon the authoritative force of an unbroken line of authority, foremost among which was *United States* v. *Arlington County*, supra, 326 F. 2d 929. See *Department of Employment* v. *United States*, supra, 385 U.S. 355, 358, n.6. *Arlington County*, like the instant action, was a suit by the United States to declare a state personal property tax invalid as in contravention of the Soldiers' and Sailors' Civil Relief Act of 1940. Its citation by the Supreme Court constitutes approval of the proposition that the United States in its capacity as a plaintiff representative of its military personnel is not bound by the restrictions of §1341.[1]

II.

Nor is the instant action barred by the general principle of sovereign immunity in that the State of Connecticut has not consented to this lawsuit. The sovereign immunity of a state may not be interposed as a defense when the United States is the party plaintiff. *Department of Employment* v. *United States*, supra at 358, citing *Monaco* v. *Mississippi*, 292 U.S. 313 (1934) and *Ex Parte Young*, 209 U.S. 123 (1908).

III.

And there is no merit to the defendants' contention that the present case should more properly be considered by a three-judge district court in view of 28 U.S.C. § 2281. A three-judge court is required by § 2281 only when an injunction against the operation or execution of a state statute is sought

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[1]An interesting analysis of the reasons for the nonapplicability of § 1341 restrictions to the United States as plaintiff is to be found in the opinion of Judge Haynsworth in *United States* v. *Livingston*, 179 F. Supp. 9, 11-12 (E.D. S.C. 1959). *aff'd per curiam*, 364 U. S. 281 (1960).

"upon the ground of the unconstitutionality of such statute." This has been construed to apply only when the state statute is challenged as directly conflicting with the mandate of the Federal Constitution. The remedy sought here, if granted, will not completely paralyze the entire operation of Connecticut's statute.

It is now settled that only one judge need sit where a state statute is alleged to be inoperative because of a federal statute which the Supremacy Clause of article VI of the Constitution declares pre-emptive of the state law. *Swift & Co.* v. *Wickham,* 382 U.S. 111 (1965), *overruling Kesler* v. *Department of Public Safety,* 369 U.S. 153 (1962). See *Query* v. *United States,* 316 U.S. 486 (1942).

Accordingly, the defendants' motion to dismiss the complaint because barred by the provisions of 28 U.S.C. § 1341 or for the other reasons enumerated above is denied.

The Merits

It has never been disputed[2] during the course of this proceeding that Connecticut has been assessing and collecting sales and use taxes from nonresident servicemen on active duty in respect of personal property purchased or used by them in Connecticut, other than in a trade or business.[3] Connecticut is one of several states which imposes a retailers' sales and use tax at a statutorily fixed rate against personal property purchased or used within the state. The statute under which such taxes are imposed by Connecticut is the Education, Welfare and Public Health Tax Act (Chap. 219, Conn. Gen. Stat. Rev. of 1958, as amended) commonly referred to as the "Sales and Use Tax Act" (§§ 12-406 to 432 Conn. Gen. Stat. Anno. 1958).

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[2]A Stipulation of Facts, dated May 24, 1967, is incorporated into this opinion.

[3]The "trade business" proviso is not applicable here.

This case presents the question whether the provisions of the Soldiers' and Sailors' Civil Relief Act bars the defendants from collecting Connecticut sales and use taxes from nonresident servicemen present here in compliance with military orders.

I.

The key provision upon which the plaintiffs rely is part of a comprehensive remedial statute designed "to protect those who have been obliged to drop their own affairs and take up the burdens of the nation." *Boone* v. *Lightner*, 319 U.S. 561, 575 (1943). *Cf. LeMaistre* v. *Leffers*, 333 U.S. 1, 6 (1943). It is found in Section 514(1) (50 App. U.S.C. § 574 (1)) of the Soldiers' and Sailors' Civil Relief Act:

> "For the purpose of taxation in respect of *personal property* . . . of any such [military] person by any State, Territory, possession, or political subdivision of any of the foregoing, . . . of which such person is not a resident or in which he is not domiciled . . ., [his] *personal property shall* not be deemed to be located or present in or to *have a situs for taxation in such State, Territory, possession or political subdivision* . . . . (Emphasis added).

The emphasized words were added to the original version of the Soldiers' and Sailors' Civil Relief Act by amendment on July 3, 1944 (58 Stat. 722). A major reason for the enactment of the amendment was that the prior law did "not prevent the State of 'temporary residence' from taxing tangible personal property actually located in such State so long as the tax does not depend on residence or domicile." S. Rep. No. 959, 78th Cong. 2d Session. 1 (1944). See H.R. Rep. No. 1514, 78th Cong. 2d Sess. 2 (1944).

When the section was amended again in 1962 (76 Stat.

768, Oct. 9, 1962)[4], it was subjected to legislative scrutiny without touching this particular provision because the Senate Committee regarded it as already making it "clear that a serviceman, living with his family and owning personal property in a State other than his State of domicile, is not subject to taxation on his personal property by the nondomiciliary State."; S. Rep. No. 2182, 87th Cong. 2d Sess. 1 (1962), accompanying H.R. 9747, U.S. Code Cong. & Adm. News 1962, p. 2841. Such approval by a legislative body is meaningful. *Cf. Electric Storage Battery Co.* v. *Shimadzu*, 307 U.S. 5, 14 (1939).

II.

Connecticut's use tax is an excise "imposed on the storage, use or other consumption in this state of tangible personal property purchased from any retailer for storage, use or other consumption in this state. . . ." Conn. Gen. Stat. § 12-411. See *Stetson* v. *Sullivan*, 152 Conn. 649, 211 A. 2d 685 (1965).

Although in the words of the statute a sales tax is imposed "for the privilege of selling tangible personal property at retail . . . ," Conn. Gen. Stat. § 12-408(1), the retailer is required to collect the tax from the consumer, and the consumer is obligated to pay the tax to the retailer. Conn. Gen. Stat. § 12-408(2). Both sales and use taxes are at the rate of 3-½% of the sales price.

The defendants contend that Connecticut's sales and use taxes do not fall within the scope of the federal statute's ban against taxation "in respect of personal property."

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[4]The 1962 Amendment, not relevant here, provided that a serviceman domiciled in State Y, with a "temporary residence" in State X could not be subjected to a personal property tax by State X, when the serviceman was temporarily out at sea or assigned to a third State but had left his family and personal property behind in State X. 76 Stat. 768 (1962). See *United States* v. *Arlington County*, supra, 326 F. 2d 929.

The breadth and sweep of this phrase has widened under the impact of two recent Supreme Court cases. In *Dameron* v. *Brodhead,* 345 U.S. 322 (1953), the petitioner was a commissioned officer of the United States Air Force, who resided in Denver, Colorado, while stationed at a nearby base. The local taxing authority assessed a tax on certain household goods comprising petitioner's personal property. This was duly paid. In the subsequent suit for refund, the state argued that the Soldiers' and Sailors' Civil Relief Act did not bar the tax since Louisiana, the state of petitioner's domicile, had not taxed the property. The federal law, it was argued, barred only multiple taxation and if the state of permanent residence or domicile did not tax, the state of "temporary residence" was free to do so. The Suprme Court rejected this narrow construction:

> "In fact, though the evils of potential multiple taxation may have given rise to this provision, Congress appears to have chosen the broader technique of the statute carefully, freeing servicemen from both income and property taxes imposed by any state by virtue of their presence there as a result of military orders. It saved the sole right of taxation to the state of original residence whether or not that state exercised the right. Congress, manifestly, thought that compulsory presence in a state should not alter the benefits and burdens of our system of dual federalism during service with the armed forces." *Dameron* v. *Brodhead,* supra, 345 U.S. at 326.

The state would distinguish *Dameron* from this case since the tax there was a recurring personal property tax, not a one-time excise imposed upon a transaction or registration. Such a distinction cannot survive the facts and logic of *California* v. *Buzard,* 382 U.S. 386 (1966).

The state tax in *Buzard* was a 2% "license fee" imposed by California Revenue and Taxation Code in addition to an

$8.00 fee for the registration of an automobile. The Supreme Court was primarily concerned with § 514(2)(b) of the Soldiers' and Sailors' Civil Relief Act,[5] which allows the state of "temporary residence" to impose a "license, fee, or excise" if such a tax is (1) owing to and assessed by the home state, and (2) not yet paid to the home state by the serviceman. The Supreme Court limited the tax that could be assessed under § 514(2)(b) to the amount needed to support the functioning of the licensing and registration procedures of the state of "temporary residence." California was not permitted to assess a "license fee" under the proviso in § 514(2)(b) against an automobile owned by a non-resident serviceman in connection with registration of that automobile where the 2% tax imposed was for general revenue purposes.

The Court ruled at the outset of its opinion that California could collect the 2% tax "*only* if it . . . [was] a 'license, fee, or excise' on a motor vehicle or its use." (382 U.S. 392-93). Since the sole tax which could legally be imposed on motor vehicles was that allowed by § 514(2)(b) and the amount of this tax was limited to that necessarily incident to registration and licensing of vehicles, the implication that no additional amount could be taxed for the use of the automobile is clear.

No viable distinction can be drawn between automobiles and other forms of personal property. The import of *Buzard* is that a state may not tax personal property of non-resident servicemen under any label, except within the limited and sharply defined registration and license exceptions contained in § 514(2)(b).

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[5]Section 514(2)(b) (50 App. U. S. C. § 574(2)(b)) provides: "The term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *Provided*, that the license, fee, or excise required by the State . . . of which the person is a resident or in which he is domiciled has been paid."

The Connecticut use tax (§ 12-411 et seq.) on the "storage, use or other consumption" of personal property in this state is therefore a tax prohibited by federal law from being imposed on nonresident servicemen.

III.

The state argues that the sales tax (§ 12-408 et seq.) is a tax on the transaction of purchase and not upon the ownership of personal property. This position must be rejected. Although imposed initially on the retailer "for the privilege of selling tangible personal property at retail" (§ 12-408(1)), the ultimate incidence of this tax falls on the purchaser from whom the retailer is required by statute to collect reimbursement (§12-408(2)). The Connecticut Supreme Court has conceded the ultimate incidence of the sales tax and has ruled that where the Federal Government is the ultimate purchaser, no tax can be levied. *Avco Mfg. Corp.* v. *Connelly,* 145 Conn. 161, 140 A. 2d 479 (1958).

Although the sales tax and use tax are distinct provisions, in terms and in concept for some purposes (see *Connecticut Light & Power Co.* v. *Walsh,* 134 Conn. 295, 300, 57 A. 2d 128 (1948)) in practical effect they are complementary and designed to promote equality of taxation on personal property whether purchased in state or out of state. *Avco Mfg. Corp.* v. *Connelly,* supra at 172.

Moreover, Connecticut imposes a use tax rather than a sales tax on the purchase of a motor vehicle, boat or airplane from other than a licensed dealer. Conn. Gen. Stat. § 12-431. Connecticut has merged the purposes and imposition of the sales and use taxes to such an extent that they are but one tax in practical effect. Any distinction between them in the context of this case would be one of form only, not of substance. The bulk of proceeds of both taxes are used indiscriminately

to promote the public health, welfare and education and for no other purpose. (§ 12-432).

Each tax hits with equivalent impact on the personal property of a nonresident serviceman. The fact that the statutory scheme for payment of the sales tax which puts the burden of collecting it on the retailer, with the right to enforce its payment by suit against the buyer, is substituted for a lien on the property itself hardly establishes that the property is not being taxed. *Cf. United States* v. *Allegheny County*, 322 U.S. 174, 187 (1944). And, although generally a property tax differs from a sales tax in being a recurrent annual demand on capital value instead of a single exaction on the initial transaction whereby ownership rights are acquired, in either case both legal incidence of the tax and the economic burden is imposed on the vendee. The difference in the rate does not change the incidence of the tax. Under whatever method the tax is enforced, or by whatever form its subject may be described, in substance the amount of the tax assessed is precisely determined by the value of the property. No matter which attribute of possessory interest in the property is hit — initial acquisition of ownership, or continued retention — it is always the nonresident serviceman who is hurt when the tax is levied.

Any confusion about concepts and definitions is considerably clarified by the rationale of the Soldiers' and Sailors' Civil Relief Act. The Congress was not measuring the exemption against particular concrete forms a state's tax might take. The rationale for the exception resulting in a certain measure of favored tax treatment which clearly emerges from the statute is that a nonresident serviceman should be exempt from "the burden of supporting the government of the States where he was present solely in compliance with military orders." *California* v. *Buzard*, supra, 382 U.S. at 393. *Dameron* v. *Brodhead*, supra, 345 U.S. 322.

Reading § 514 "with an eye friendly to those who dropped their affairs to anwer their country's call," *LeMaistre* v. *Leffers*, supra, 333 U.S. at 6, the imposition of the sales tax and the use tax must yield to the mandate of Congress. Accordingly, I hold that the phrase "taxation in respect of personal property" in § 514 embraces Connecticut's "Sales and Use" taxes.

IV.

The state also argues that Congress in enacting the Buck Act (4 U.S.C. §§104-110) has conferred upon the states jurisdiction to collect sales and use taxes "in any Federal area." 4 U.S.C. § 105. The Buck Act, it is contended, would conflict with any construction of the Soldiers' and Sailors' Civil Relief Act which would bar a state from collecting sales and use taxes. The adage that conflicting statutes must be construed so as to give effect to both is invoked. *United States* v. *Zacks*, 375 U.S. 59, 67-68 (1963). Accordingly, it is argued, the Soldiers' and Sailors' Civil Relief Act should not be construed to apply to sales and use taxes in order to avoid a conflict of federal statutes.

Section 105 of the Buck Act merely provides that no person "shall be relieved from liability . . . on the ground that the sale or use . . . occurred in whole or in part within a Federal area. . . ." The Soldiers' and Sailors' Civil Relief Act, however, gives relief from liability on an entirely different ground, namely, that the person taxed is a non-resident serviceman. The scope and purpose of the two statutes are entirely separate and distinct. There is no conflict between them. In granting states permission to impose sales taxes within the federal enclave Congress did not say that it granted authority to impose taxes on sales to nonresident servicemen generally.

V.

The state raises an affirmative defense that the Government is barred from bringing this suite under the doctrine of laches. The relevant words of § 514(1) (50 App. U.S.C. § 574 (1)) were added by amendment in 1944 and the Connecticut Sales and Use tax was enacted in 1947. Connecticut has, therefore, been collecting these taxes for twenty years. So the state argues. But the ostensible illegality of these assessments may not have become obvious until the very recent decisions of the United States Supreme Court in *Dameron* and *Buzard*. However, a decision on the merits as to whether laches existed need not be made.

It is a matter of well-settled law that the "United States is not bound by state statutes of limitation or subject to the defense of laches in enforcing its rights." *United States* v. *Summerlin*, 310 U.S. 414, 416 (1940). The principle has its roots deep in the common law. It is epitomized in the ancient maxim: *Nullum tempus occurrit regi*.[6] Today, the rule is not based so much on the prerogative of the sovereign as on the needs of public policy. *Guaranty Trust Co.* v. *United States*, 304 U.S. 126 (1938); *United States* v. *Thompson*, 98 U.S. 486 (1878). The principle was very recently confirmed in *Costello* v. *United States*, 365 U.S. 265, 281 (1961). In summary, the United States, as sovereign, is not subject to a defense of laches when it sues. That defense may not be interposed here.

But conceding that the Government may pursue this action for a declaratory judgment, it does not follow that indi-

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[6]An excellent analysis of the history and policy of the rule and maxim is to be found in *Guaranty Trust Co.* v. *United States*, supra, 304 U. S. at 132. Justice Stone traces its development from the *Magdalen College Case*, 11 Co. Rep. 66b, 74b and Bracton, De Legibus, Lib. ii, c. 5, § 7, down to the opinion of Judge Story in *United States* v. *Hoar*, Fed. Cas. No. 15, 373, pp. 329, 330. Judge Story states that the reason for the rule is "to be found in the great public policy of preserving the public rights, revenues, and property from injury and loss, by the negligence of public officers."

vidual servicemen may ignore the state procedure in claiming refunds for taxes already paid.

> "No refund shall be allowed unless a claim therefor is filed with the commissioner within three years from the last day of the month succeeding the quarterly period for which the overpayment was made, or, with respect to assessment made under sections 12-415 and 12-416, within six months after the assessments become final, or within six month from the date of overpayment, whichever period expires later. No credit shall be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the commissioner within such period, or unless the credit relates to a period for which a waiver is given pursuant to subsection (8) of section 12-415." Conn. Gen. Stat. § 12-425(2).

State law has been given effect as controlling the assessment date for property taxes even when a congressional exemption existed after a specified date. *Board of County Commissioners* v. *Seber*, 130 F. 2d 663, 670 (10th Cir. 1942), aff'd. 318 U.S. 705 (1943). Also,

> "In the absence of explicit legislative policy cutting across state interests, we draw upon a general principle that the beneficiaries of federal rights are not to have a privileged position over other aggrieved tax-payers in relations with the states or their political subdivisions." *Jackson County* v. *United States*, 308 U.S. 343, 352 (1939).

The Supreme Court explicitly avoided deciding the applicability of the state statute of limitations in a suit brought by private litigants to recover state taxes assessed and collected in violation of a specified federal exemption. *Ward* v. *Love County*, 253 U.S. 17, 25 (1920).

Moreover, the beneficiaries of the federally created exemption from state taxes in *Seber, Ward,* and *Jackson County* were American Indians. These people have long occupied a special position as wards of the United States.[7] A particularly favorable construction is to be accorded tax exemptions secured to the Indian people. *Carpenter* v. *Shaw,* 280 U.S. 363, 366-67 (1930). But, although a state cannot invalidate a federally created right, state law may implement its exercise in the interest of orderly administration.[8] *Board of County Commissioners* v. *Seber,* supra, 130 F. 2d at 670; see *Jackson County* v. *United States,* supra, 308 U.S. at 351-52 (Mr. Justice Frankfurter).

Accordingly, an individual serviceman seeking to recover sales and use taxes paid to Connecticut must comply with the three year statute and the procedure outlined in Conn. Gen. Stat. § 12-425(2). Connecticut law does not require formal protest[9] at time of payment in order to recover taxes paid, provided a claim for refund is made within the time specified in § 12-425(2).

VI.

A final point remains to be considered. Besides the United States of America, Lt. Stanley D. Schuman, U.S.N., is a party plaintiff who sues for himself and on behalf of all servicemen or former servicemen similarly situated and affected, too numerous to be made parties. There undoubtedly are attributes to this action by him which would have been sufficient to

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[7]See the opinion of Mr. Justice Black in *Jackson County* v. *United States,* supra, 308 U.S. at 353. See also *Board of County Commissioners* v. *Seber,* supra, 318 U.S. at 715.

[8]This principle is applicable at least when the suit is by a private litigant, even if not controlling in a suit by the United States. *Compare City of New Orleans* v. *United States,* 371 F. 2d 21, 28 (5th Cir. 1967) *with United States* v. *Cocreham,* 247 F. Supp. 731, (E.D. La. 1965).

[9]See *District of Columbia* v. *McFall,* 188 F. 2d 991, 992 (D.C. Cir. 1951).

meet the prerequisites of Rule 23(a), Fed. R. Civ. P., for a class action,[10] and this case also fits neatly within the additional requirement of Rule 23(b)(2):

> [T]he party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole;"

But there is a significant deficiency in the pleadings. Even if this were to be treated as a class action brought by Lt. Schuman so as to permit aggregation of all the individual claims in order to establish the requisite jurisdictional amount under either 28 U.S.C. §§ 1331 or 1332, this amount is not alleged to be in controversy. Considering that his own claim is for $21.53, an assumption that the requisite amount must exist is somewhat speculative. More significantly, the eleventh amendment forbids a suit by a private individual against a state in the federal courts. Nor does Connecticut's consent to be sued in its own court (Conn. Gen. Stat. § 12-422) impart its consent to be sued in a federal court. *Great Northern Life Ins. Co.* v. *Read,* 322 U.S. 47, 54 (1944; *Ford Motor Co.* v. *Department of Treasury of Indiana,* 323 U.S. 459, 465 (1945). Schuman's claim is dismissed for lack of jurisdiction without prejudice to his claim against the State of Connecticut.

The litigious situation presented by this case will be quite as fully benefited as a practical matter by granting the relief sought by the Government, for that will settle the legality of the state's refusal to honor the exemption from its sales

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[10]Rule 23(a) provides: "One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class."

and use taxes which § 514 of the Soldiers' and Sailors' Civil Relief Act requires. Commendably, counsel for both parties have agreed that declaratory relief rather than injunctive relief will suffice to secure the state's ready compliance with the court's ruling.

Accordingly, the court

DECREES and ADJUDGES that judgment enter declaring that each and all assessments and collections of sales or use taxes which defendants have made and are making in respect of personal property purchased or used in Connecticut by Schuman and other persons, who, at the time as of which the tax was or is levied, were or are members of the Armed Forces of the United States on active duty and residents of or domiciled in states other than Connecticut and absent from such states other than Connecticut and absent from such states solely by reason of compliance with military or naval orders, were and are in contravention of the Soldiers' and Sailors Civil Relief Act of 1940.

Dated at Hartford, Connecticut, this 28th day of June, 1967.

M. JOSEPH BLUMENFELD
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA — vs — JOHN L. SULLIVAN, TAX COMMISSIONER OF THE STATE OF CONNECTICUT, ET AL	CIVIL NO. 11,928

JUDGMENT

This action came on for trial before the Court, Honorable M. Joseph Blumenfeld, United States District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered, and the Court having directed that judgment enter in accordance with its decision,

It is ORDERED, ADJUDGED and DECREED that each and all assessments and collections of sales or use taxes which defendants have made and are making in respect of personal property purchased or used in Connecticut by Schuman and other persons, who, at the time as of which the tax was or is levied, were or are members of the Armed Forces of the United States on active duty and residents of or domiciled in states other than Connecticut and absent from such states solely by reason of compliance with military or naval orders, were and are in contravention of the Soldiers' and Sailors' Civil Relief Act of 1940.

Dated at New Haven, Connecticut this 29th day of June, 1967.

GILBERT C. EARL, *Clerk*

By THOMAS A. GRIMES
Chief Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

— VS —

JOHN L. SULLIVAN, TAX COMMISSIONER OF THE STATE OF CONNECTICUT, ET AL

CIVIL NO. 11,928

ORDER

The plaintiff having, on July 10, 1967, moved this Court for an order amending the judgment herein dated June 29, 1967; and the matter having come on to be heard in open court on September 11, 1967; and counsel for plaintiff having acknowledged that it is plaintiff's understanding that defendants' time to appeal will not begin to run until the entry of this order; now, therefore, its is

ORDERED that defendants may continue to collect sales and use taxes from non-resident Servicemen pending the ultimate determination of this action in any Appellate Court which may take jurisdiction thereof; provided that if this Court's judgment that such taxes may not be collected from non-resident Servicemen is ultimately sustained, the State of Connecticut shall refund to non-resident Servicemen all sales and use taxes paid by them at any time since June 28, 1964, upon their filing an application therefor not later than three (3) years following the ultimate determination of this matter, consisting of

(a) a receipt or other evidence showing the purchase of tangible property and the payment of the tax to the State of Connecticut or to a Connecticut retailer; and

(b) a certification by the applicant's Commanding Officer, or other evidence, that at the time of purchase the applicant was a Serviceman on active duty and not a resident of Connecticut.

And, it is FURTHER ORDERED that the judgment herein dated June 29, 1967 be and hereby is amended to conform to the provisions of this Order.

Dated at Hartford, Connecticut, this 2nd day of October, 1967.

M. Joseph Blumenfeld

M. JOSEPH BLUMENFELD
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 427 — September Term, 1967.

(Argued May 16, 1968 Decided July 10, 1968.)

Docket No. 32007

UNITED STATES OF AMERICA, and LIEUTENANT STANLEY D. SCHUMAN, U. S. N., a member of the armed forces of the United States on active military service not a resident of or domiciled in the State of Connecticut, suing on behalf of himself and all servicemen or former servicemen similarly situated and affected,

Plaintiffs-Appellees,

— against —

JOHN L. SULLIVAN, Tax Commissioner of the State of Connecticut; GERALD A. LAMB, Treasurer of the State of Connecticut; LOUIS I. GLADSTONE, Comptroller of the State of Connecticut; and ROBERT K. KILLIAN, Attorney General of the State of Connecticut,

Defendants-Appellants.

Before:

MOORE, HAYS and FEINBERG,

Circuit Judges.

Appeal from a judgment of the United State District Court for the District of Connecticut, M. Joseph Blumenfeld, J., which granted the government's motion for summary

judgment declaring that collection of Connecticut's sales and use taxes from nonresident servicemen present in the state solely pursuant to military orders contravened section 514 of the Soldiers' and Sailors' Civil Relief Act, 50 U. S. C. App. § 574. Affirmed.

FEINBERG, *Circuit Judge*:

This case was brought by the United States of America[1] against various officials of the State of Connecticut to determine whether servicemen present in Connecticut solely by reason of military orders are subject to Connecticut's sales and use taxes. The United States District Court for the District of Connecticut, M. Joseph Blumenfeld, J., granted the motion of the United States for summary judgment, 270 F. Supp. 236 (1967), on the ground that collection of such taxes contravened section 514 of the Soldiers' and Sailors' Civil Relief Act, 50 U. S. C. App. §574[2] Defendants appealed; we affirm.

Like most states, Connecticut levies a broad pattern of sales and use taxes on its residents. Conn. Gen. Stats. §§12-406 to -432a. With certain exceptions, all retail sales of tangible personal property are subject to the sales tax. The retailer pays the state three and one-half per cent of his gross receipts on goods subject to the tax, section 12-408(1); in turn, he is entitled to reimbursement from the customer. Sections 12-408(2), (3). The use tax, section 12-411, is imposed at the

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[1]Lieutenant Stanley D. Schuman, U. S. N., was also a plaintiff below, having brought a class action pursuant to Fed. R. Civ. P. 23 on behalf of himself and all other servicemen similarly situated. The district court dismissed his complaint for lack of jurisdiction, and no appeal has been taken.

[2]Plaintiff also sought an injunction against further collections of the taxes; before the decision, however, counsel for both parties agreed that declaratory relief would suffice to secure the state's compliance. The court permitted Connecticut to continue collecting the taxes pending the outcome of the appeal. It has been stipulated that if the district court's decision is ultimately upheld, all taxes improperly collected since June 28, 1964, will be refunded upon proper application.

same rate on the "storage, use or other consumption" in Connecticut of "tangible personal property" purchased from a retailer for such storage, use or other consumption. Under the use tax, the customer is directly liable to the state, although if the purchase is made from a Connecticut retailer who collects the tax, the customer is relieved of liability. Section 12-411 (2). Sales of motor vehicles, boats and airplanes from other than licensed dealers are also subject to the use tax. Section 12-431. When a Connecticut sales tax has been collected, the use tax does not apply. Section 12-413(1). Finally, whether a sales or use tax has been collected, all proceeds are to be used exclusively for "public health, welfare and education purposes." Section 12-432.

In the district court, the United States offered some examples of the imposition of these taxes on naval personnel domiciled in other jurisdictions but stationed in Connecticut. Lieutenant Stanley D. Schuman of Nebraska[3] and Commander Kent J. Carroll of Michigan both purchased used motorboats in Connecticut from non-dealers. Schuman paid the use tax under protest; Carroll refused to pay. Commander Clyde H. Shaffer of Pennsylvania purchased a new car from a Connecticut dealer who collected the sales tax. Commander Jerome W. Roloff of Wisconsin bought a used car in Florida, and paid a sales tax there. When he subsequently registered the car in Connecticut, he was required to pay the difference between the Florida sales tax and the Connecticut use tax. Finally, Commander William L. Foster purchased a new car from a Connecticut dealer and at the same time registered it in Texas, his home state, paying a Texas sales tax. Nevertheless, the dealer collected a full Connecticut tax.

The sole question on appeal is whether these purchases, and others like them, were exempt from Connecticut's sales

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[3]Schuman at the time of filing the complaint was both a domiciliary and resident of Nesbraska; the other personnel listed above had similar connections with their states of origin.

and use taxes because of section 514 of the Soldiers' and Sailors' Civil Relief Act.[4] In relevant part, that section provides, 50 U. S. C. App. § 574:

> (1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income by any State . . . such person shall not be deemed to have lost a residence or domicile in any State . . . solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State . . . while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income or gross income of any such person by any State . . . of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State . . . and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State . . . . Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders: *Provided*, That nothing contained in this section shall prevent taxation by any State . . . in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. . . .
>
> (2) When used in this section, (a) the term "per-

[4] It has been stipulated that Connecticut cannot tax sales to servicemen made by military exchanges or commissaries operated by the armed services on military installations. Such sales are exempt under the Buck Act, 4 U. S. C. § 107.

sonal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *Provided*, That the license, fee, or excise required by the State . . . of which the person is a resident or in which he is domiciled has been paid.

The basic purpose of section 514, as it now reads, is clear from its wording and structure. It defines the residence of servicemen, the source of their income, the situs of their property, and the nature of taxation, all for the purpose of exempting servicemen from certain forms of taxation by states in which they are stationed. Section 514(1) first provides that a serviceman shall not lose his home state residence or domicile because of absence due to military orders. Correlatively, it also states that he shall not acquire a residence or domicile in a host state because of his presence there under the same military requirement. It then illustrates the consequences of these provisions. For the purpose of state taxation on income, compensation for military service "shall not be deemed income . . . from sources within" any state of which the serviceman is not a resident. For the purpose of taxation "with respect to personal property, or the use thereof," that property shall not be deemed "to have a situs for taxation" in the host state. Thus, section 514(1) eliminates jurisdictional grounds that otherwise could support taxation by the host state related to the income or personal property of a serviceman. The broad nature of section 514(1) is also made clear by the definitions in section 514(2), which provide that "the term 'personal property' shall include tangible and intangible property (including motor vehicles)," and that "the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof."[5]

[5]Subsection (2) was added to § 514 in 1944, as discussed below.

In considering whether Connecticut's sales and use taxes are affected by section 514, we turn from its broad design to its details, recognizing that while the face of the statute is not always the end of its interpretation, cf. *In re Miracle Mart, Inc.*, Slip Op. 2533 (2d Cir. June 3, 1968), it is undeniably a good place to start. In arguing that nonresident servicemen stationed in Connecticut are exempt from these state taxes, the United States relies on the language of section 514, which by its terms affects taxation "in respect of . . . personal property." The Connecticut use tax is explicitly levied on the storage, use or consumption in Connecticut of "tangible personal property" purchased from a retailer for such use, and the amount of tax is computed by reference to the "sales price of the property." By its very terms, this is a tax "in respect of . . . personal property." The statutory phrase has a generous reach. The United States argues that it would seem to encompass all taxes, no matter how labelled, which pertain or relate to personal property, rather than to be limited to taxes *on* personal property. Certainly, if a nonresident serviceman's personal property is deemed, in the words of the statute, not to be present in the state, it would be difficult to justify a use tax on it. We realize that this begs the question, for such ghostly absence is allowed only for the purpose of specified taxes, whose definition we must construe. But the assumption helps to show the connection between the tax and the physical presence in the state of the personal property, a taxable nexus which seems to fall within the broad phrase "in respect of . . . personal property." Congress clearly had in mind the breadth of that language in removing from its effect taxes on a trade or business.[6] Moreover, section 514 twice specifically envisions the possibility of taxes involving the

[6]Thus, section 514 also states: *Provided*, That nothing contained in this section shall prevent taxation by any State . . . in respect of personel property used in or arising from a trade or business, if it otherwise has jurisdiction.

"use" of property. Thus, subsection (1) states that the exemption from state taxation applies to taxation:

> with respect to personal property, *or the use thereof*, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such [military] orders . . . . [Emphasis added.][7]

Similarly, subsection (2) states that:

> the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles *or the use thereof* . . . . [Emphasis added.]

The Connecticut sales tax, which is incurred at the time of purchase, is in terms based upon the retailer's privilege of sale, but what he must sell is "tangible personal property." Moreover, whatever the conceptual basis may be, the tax is in reality also assessed against the buyer of the "tangible personal property," as the Connecticut Supreme Court has held, see *Avco Mfg. Corp.* v. *Connelly*, 140 A. 2d 479, 484 (Conn. 1958), and as the statute explicitly requires. Section 12-408(2). See also *First Agricultural Nat'l Bank* v. *State Tax Commission*, 36 U. S. L. W. 4686, 4688-89 (U. S. June 17, 1968). Judge Blumenfeld pointed out in his thorough opinion, 270 F. Supp. at 243-44, that the sales and use taxes are:

> [C]omplementary and designed to promote equality of taxation on personal property whether purchased in state or out of state. . . . Connecticut has merged the purposes and imposition of the sales and use taxes to such an extent that they are but one tax in practical effect. Any distinction between them in the context of this case would be one of form only, not of substance. . . .

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[7]This language was added to § 514 in 1962, under circumstances discussed below.

> Each tax hits with equivalent impact on the personal property of a nonresident serviceman. The fact that the statutory scheme for payment of the sales tax which puts the burden of collecting it on the retailer, with the right to enforce its payment by suit against the buyer, is substituted for a lien on the property itself hardly establishes that the property is not being taxed. . . . No matter which attribute of possessory interest in the property is hit — initial acquisition of ownership, or continued retention — it is always the nonresident serviceman who is hurt when the tax is levied. [Citations omitted.]

See also *Halliburton Oil Well Cementing Co.* v. *Reily*, 373 U. S. 64, 66 (1963); *Henneford* v. *Silas Mason Co.*, 300 U. S. 577, 581-83 (1937). In addition, as with the use tax, the sales tax is computed as a percentage of the property's value, as approximated by its sales price. These basic characteristics indicate that the sales tax also falls within the definition of a tax "in respect of . . . personal property."

The state's argument to us makes much of the theoretical distinction between an income tax or a property tax, on the one hand, and a privilege tax, on the other. The point is made that section 514 recognizes this difference and affects only the former type, while a sales or use tax is obviously the latter. Of course, this distinction may be useful for analysis in some instances, but section 514 does not in terms make it.[8] Because a tax "in respect of" property would appear to be broader than a tax "on property, citations to show that a use tax is not a tax "on" property[9] are not controlling.

The language of section 514, therefore, is helpful to plaintiff United States rather than to Connecticut. However, the state finds support in the statute's silence on the subject

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[8]See also the discussion of *California* v. *Buzard*, 382 U. S. 386 (1966).
[9]E.g., *Henneford* v. *Silas Mason Co.*, 300 U. S. 577, 582 (1937); *Connecticut Light & Power Co.* v. *Walsh*, 57 A. 2d 128 (Conn. 1948).

of sales and use taxes. It points out that when Congress in 1944 revised section 514 to read essentially as it does today, state sales and use taxation was already widespread. Therefore, argues the state, if Congress had intended to preclude such taxation of nonresident servicemen, it would have said so.

An argument based on silence is difficult to deal with, since inferences can be drawn either way; e.g., if Congress had wanted to allow state sales and use taxation, it could have said so in the proviso which permits normal "trade or business" taxes.[10] The legislative history is not informative on this specific point, for we find no mention of sales or use taxes. However, we do discern there a significant concern for the welfare of the serviceman, see, e.g., H. R. Rep. No. 2198, 77th Cong., 2d Sess. 2 (1942), consistent with the Supreme Court's instruction to us to read the Act "with an eye friendly to those who dropped their affairs to answer their country's call." *Le Maistre* v. *Leffers*, 333 U. S. 1, 6 (1948). Section 514 was first enacted in 1942 to protect servicemen against the undue burdens of multiple taxation to which movement around the country under military orders might subject them.[11] In 1944, Congress amended the statute to make it absolutely clear that taxation in respect of nonresident servicemen's "personal" property was impermissible even if not based on the serviceman's residence or domicile.[12] Moreover, even though a contrary interpretation was possible, the Supreme Court later held in *Dameron* v. *Brodhead*, 345 U. S. 322, 326 (1953), that Congress did not restrict the statute's effect to actual incidents of double taxation:

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[10]See note 6 *supra*.

[11]See S. Rep. No. 1558, 77th Cong., 2d Sess. 11 (1942); H. R. Rep. No. 2198, 77th Cong., 2d Sess. 6 (1942); Hearings on H. R. 7029 Before the House Committee on Military Affairs, 77th Cong., 2d Sess. 28 (1942).

[12]See S. Rep. No. 959, 78th Cong., 2d Sess. 1 (1944); H. Rep. No. 1514, 78th Cong., 2d Sess. 2 (1944).

> In fact, though the evils of potential multiple taxation may have given rise to this provision, Congress appears to have chosen the broader technique of statute carefully, freeing servicemen from both income and property taxes imposed by any state by virtue of their presence there as a result of military orders. It saved the sole right of taxation to the state of original residence whether or not that state exercised the right. Congress, manifestly, though that compulsory presence in a state should not alter the benefits and burdens of our system of dual federalism during service with the armed forces. [Footnote omitted.]

In 1962, Congress felt it necessary to clarify the statute even further. A naval officer from New Jersey, stationed in Arlington, Virginia, had been on sea duty for over a year. While he was so engaged, Arlington County assessed a tax on the personal property that he had left in Virginia with his family. The county claimed that since the officer was no longer in Arlington under military orders, his personal property was not exempt from taxation, even though it could not have been taxed while he was there. The case was brought to the attention of Congress, which added the following sentence to subsection (1) of section 514:

> Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders . . . .

The new sentence was broader than the facts required, since it explicitly referred to the "use" of personal property as an object of the federal exemption, even though the Arlington case did not involve a use tax. As already noted, this added

language literally applies to the appeal now before us, whether or not Congress intended to broaden section 514. Plaintiff United States points out that if Congress only intended to clarify the statute, as seems to be the case,[13] then this supports the view that the statute already covered use taxes.[14] Otherwise, the logical conclusion would be that Congress simply made a mistake when it included the phrase "or the use thereof," an assumption which ignores the fact that the same phrase had already been in subsection (2) of section 514 for many years.

The most recent discussion of legislative intent appears in *California* v. *Buzard*, 382 U. S. 386 (1966). The Court there considered motor vehicle registration and license fees which had been imposed by California on an Air Force Captain from Washington. The car in question had been purchased in Alabama and brought to California; since it had never been in Washington, there was no duty to register it in that state. The Court construed section 514(2)(b) to mean that an automobile had to be registered in either the home state or the host state. Subsection (2) was added to section 514 in 1944 as part of the clarifying amendments which specifically stated that the exemption of section 514 applied to taxes relating to "personal" property. See note 12 *supra* and accompanying text. Subsection (2)(b) provides that the "taxation" referred to in section 514(1) includes "licenses, fees, or excises imposed in respect to motor vehicles or the use thereof . . . ." Then a proviso adds:

> *Provided*, That the license, fee, or excise required by the State . . . of which the person is a resident or in which he is domiciled has been paid.

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[13] See S. Rep. No. 2182, 87th Cong., 2d Sess. 1 (1962); H. R. Rep. No. 2126, 87th Cong., 2d Sess. 2 (1962).

[14] The case that gave rise to the 1962 amendment was eventually decided in *United States* v. *Arlington County*, 326 F. 2d 929 (4th Cir. 1964). The court there held that tax was barred even under the language before amendment.

Thus, the exemption for servicemen from motor vehicle taxes is explicitly stated in section 514(2)(b), and then modified in the proviso, to deal with a specific problem created by the breadth of section 514(1): whether a serviceman can escape all registration by keeping his car out of his home state.

The Court concluded in *Buzard* that the effect of the proviso to section 514(2)(b) was to narrow the exemption from state taxation granted by section 514(1). Thus, a host state could tax a serviceman's car for registration purposes if his home state had not done so. 382 U. S. at 391-92. However, the Court limited the effect of the proviso to taxes which were necessary to registration. California's license fee of two per cent "of the market value of the vehicle" was, under state law, not imposed as a tax "essential to the registration and licensing of the . . . vehicle." Rather, it served the state's revenue interests and was "raised to defray the general expenses of government." *Id.* at 395-96. The Court pointed out, id. at 393, that the license fee[15] there involved did not come within the exception to section 514(1)'s exemption because:

> The very purpose of § 514 in broadly freeing the nonresident serviceman from the obligation to pay property and income taxes was to relieve him of the burden of supporting the governments of the States where he was present solely in compliance with military orders.

Consequently, the Court held that the California motor vehicle tax there under consideration was barred by section 514.

The language and approach of the Court in *Buzard* strongly suggest that but for the proviso to section 514(2)(b), the host state could not tax a nonresident serviceman's ve-

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[15]The facts in *Buzard* did not require the Court to consider whether California's "registration fee" of $8.00 was in a different category.

hicle at all because motor vehicles are obviously personal property. Although the taxes in the instant case are non-recurring, while those in *Buzard* appear to have been annual,[16] we think *Buzard* is broad enough to rule here. Connecticut's sales and use taxes are imposed for general revenue purposes; imposing such taxes on non-resident servicemen improperly places the burden of supporting Connecticut upon their shoulders. In addition, it is significant that the tax in *Buzard* was explicitly labelled a "privilege" tax;[17] yet the Court held that the broad language of section 514 barred its application to the Captain.

We conclude that the language and the spirit of section 514 call for affirmance of Judge Blumenfeld's decision. Connecticut contended at oral argument that this will cause immense administrative problems in differentiating non-resident servicemen from other customers. We do not think these problems insurmountable, or even seriously burdensome. In fact, Connecticut has already exempted other groups from its sales and use taxes, and no ill effect from these exemptions has been brought to our attention. See sections 12-412 (a) (the United States, the state or subdivisions), (e) (nonprofit charitable hospitals), (h) charitable and religious organizations).

The judgment below is affirmed.

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[16]California's Revenue & Taxation Code provides, in part: § 10751. A license fee is hereby imposed *for the privilege* of operating upon the public highways in this State any vehicle of a type which is subject to registration under the Vehicle Code.
§ 10752. The *annual* amount of the license fee shall be a sum equal to two (2) percent of the market value of the vehicle as determined by the department. [Emphasis addd.]

[17]See note 16 *supra*.

United States Court of Appeals

For The

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the tenth day of July one thousand nine hundred and sixty-eight.

Present:

HON. LEONARD P. MOORE,
HON. PAUL R. HAYS,
HON. WILFRED FEINBERG,

Circuit Judges.

UNITED STATES OF AMERICA, ET AL.,

Plaintiffs-Appellees,

v.

JOHN L. SULLIVAN, Tax Commissioner of the State of Connecticut, GERALD A. LAMB, Treasurer of the State of Connecticut, LOUIS I. GLADSTONE, Comptroller of the State of Connecticut and ROBERT K. KILLIAN, Attorney General of the State of Connecticut,

Defendants-Appellants.

Appeal from the United States District Court for the District of Connecticut.

This cause came on to be heard on the transcript of record from the United States District Court for the District of Connecticut, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed with costs to the appellees.

/s/ A. DANIEL FUSARO
Clerk

Supreme Court of the United States

No. 610, October Term 1968

JOHN L. SULLIVAN, Tax Commissioner of the State of Connecticut, et al.,

Appellants,

v.

UNITED STATES ET AL.

APPEAL from the United States Court of Appeals for the Second Circuit.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

January 13, 1969

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In The

Supreme Court of the United States

OCTOBER TERM, 1968

No. 610

UNITED STATES OF AMERICA and LIEUTENANT STANLEY D. SCHUMAN, U. S. N., a member of the armed forces of the United States on active military service not a resident of or domiciled in the State of Connecticut, suing on behalf of himself and all servicemen or former servicemen similiarly situated and affected,

Appellees,

— v. —

JOHN L. SULLIVAN, Tax Commissioner of the State of Connecticut; GERALD A. LAMB, Treasurer of the State of Connecticut; LOUIS I. GLADSTONE, Comptroller of the State of Connecticut; and ROBERT K. KILLIAN, Attorney General of the State of Connecticut,

Appellants.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JURISDICTIONAL STATEMENT

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Dated: October 7, 1968

INDEX

	Page
Reference to Opinions below.	2
Grounds of Jurisdiction.	2
Questions presented.	4
Statement of the Case.	4
Substantiality of Questions presented.	5
A. Case of first impression.	5
B. Cases cited by the Lower Court do not support its opinion.	6
C. Legislative History of Sec. 514.	7
D. The decision is of national importance.	7
E. The constitutionality of Sec. 514, as interpreted by the Lower Court, is in doubt.	8
F. A Congressional Grant of immunity from state taxation must be expressly conferred.	9

APPENDIX

Decision of the United States Circuit Court of Appeals for the Second Circuit	1A
Decision of the United States District Court for the District of Connecticut	14A
Sec. 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended. (50 U.S.C. App. 1964 ed. Sec. 574)	29A

Connecticut Education, Welfare and Public Health Tax Act 31A
(Conn. Gen. Stat., Secs. 12-406 to 12-432a).

Senate Report No. 959, 78th Congress, 2d Sess. 1 (1944); 73A

H. R. Report No. 1514, 78th Congress, 2d Sess. 2 (1944). 82A

CASES CITED

	Page
City of Detroit et al v. *The Murray Corporation of America*, (355 U.S. 489).	3
Dameron v. *Brodhead*, 345 U.S. 322.	7
California v. *Buzard*, 382 U.S. 386.	7
Oklahoma Tax Comm. v. *United States*, 319 U. S. 598, 604	9
Graves v. *New York ex rel O'Keefe*, 306 U.S. 466, 480	9
United States Trust Co. v. *Helvering, Comm. of Int. Rev.*, 307 U. S. 60.	9

In The

Supreme Court of the United States

OCTOBER TERM, 1968

No.

UNITED STATES OF AMERICA and LIEUTENANT STANLEY D. SCHUMAN, U. S. N., a member of the armed forces of the United States on active military service not a resident of or domiciled in the State of Connecticut, suing on behalf of himself and all servicemen or former servicemen similarly situated and affected,

Appellees,

— v. —

JOHN L. SULLIVAN, Tax Commissioner of the State of Connecticut; GERALD A. LAMB, Treasurer of the State of Connecticut; LOUIS I. GLADSTONE, Comptroller of the State of Connecticut; and ROBERT K. KILLIAN, Attorney General of the State of Connecticut,

Appellants.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JURISDICTIONAL STATEMENT

Appellants, officials of the State of Connecticut, appeal from the final judgment of the United States Court of Appeals for the Second Circuit affirming the judgment of the United States District Court for the District of Connecticut, as amended. This Statement is submitted to demonstrate that the Supreme Court of the United States has jurisdiction to con-

sider the appeal, and that substantial questions are presented therein.

OPINIONS BELOW

The decision appealed from is reported in F2d (1968). A copy of said decision appears in the Appendix, beginning at page 1A.

The decision of the United States District Court of Connecticut is reported in 270 F. Supp. 236 (1967). A copy of said decision appears in the Appendix, beginning at page 14A.

GROUNDS OF JURISDICTION

Suit was instituted in the United States District Court for the District of Connecticut by the United States States of America and Lieutenant Stanley D. Schuman, U.S.N., against various officials of the State of Connecticut to determine whether imposition and collection of the Connecticut Sales and Use Tax[1] contravened Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 as amended. 50 U.S.C. App. Sec. 574.

Federal jurisdiction for the United States of America as a party plaintiff is based on 28 U.S.C. Sec. 1345. The District Court dismissed Lieutenant Schuman's claim for lack of jurisdiction, from which no appeal was taken.

The District Court awarded summary judgment to the United States but by amendment to its judgment stipulated to by the parties Connecticut was permitted, subject to refund, to continue to collect the disputed taxes pending the ultimate determination of the case on appeal.

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[1]Officially referred to as the Education, Welfare and Public Health Tax, Conn. Gen. Stat. (Rev. 1958) as amended. Ch. 219, Sections 12-406-12-432(a).

This decision was affirmed by the United States Court of Appeals for the Second Circuit and judgment rendered on July 10, 1968. Notice of Appeal was filed in the United States Court of Appeals for the Second Circuit on July 30, 1968.

The appeal is taken pursuant to 28 U.S.C. Sec. 1254(2) and is supported by the case of *City of Detroit, et al vs. The Murray Corporation of America*, 355 U.S. 489, 2L. Ed. 2d, 441, 78 S. Ct. 458 (1958).

In that case, the City of Detroit adopted a personal property tax which was levied on owners or possessors of personal property. The tax was imposed and collected on property in the possession of Murray, a subcontractor on a United States Government project, even though title to the property was in the United States.

Murray and the United States claimed the tax contravened the Federal Constitution on the basis of the tax immunity of the Government and were successful in both the Federal District Court and the Court of Appeals.

The Supreme Court of the United States determined that it was a proper case for appeal pursuant to 28 U.S.C. 1254(2).

In the instant case the situation is very similar to that in *Detroit* v. *Murray*, supra.

Here the Government is claiming immunity from a state tax law for certain servicemen on the basis of a federal law.

Both the District Court of Connecticut and the Court of Appeals for the Second Circuit have decided the imposition and collection of the tax is repugnant to the federal law.

We, therefore, respectfully submit that this is a proper appeal pursuant to 28 U.S.C. 1254(2).

Statutes Involved

Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, (50 U.S.C. App. 1964 Ed., Sec. 574) is set forth in the Appendix, beginning at page 29A.

Education, Welfare and Public Health Tax Act (commonly referred to as the Sales and Use Tax Act), Conn. Gen. Stat. (Rev. 1958) as amended, Ch. 219, Secs. 12-406 to 12-432(a)., is set forth in the Appendix at page 31A.

Questions Presented

1. Whether the imposition and collection of the Connecticut Sales and Use taxes on the purchase or use of tangible personal property in Connecticut by non-resident military personnel stationed in Connecticut pursuant to military orders contravenes Sec. 514 of the Soldiers' and Sailors' Civil Relief Act?

2. Whether Section 514 of the Soldiers' and Sailors' Civil Relief Act, as interpreted by the Court of Appeals for the Second Circuit, is an unconstitutional infringement upon the reserved power of the states to lay and collect taxes?

STATEMENT OF THE CASE

Since 1947 the State of Connecticut has imposed sales and use taxes on the purchase or use of tangible personal property in Connecticut by non-resident military personnel stationed in this State pursuant to military orders.

While in Connecticut pursuant to military orders, Lieut. Stanley D. Schuman, U.S.N., purchased a pleasure boat in Connecticut. On April 15, 1966, Lieut. Schuman paid to Connecticut under protest a tax on the casual purchase and

use of said pleasure boat pursuant to Conn. Gen. Stat. (Rev. of 1958) Sec. 12-431.

On April 21, 1966, Lieut. Schuman and the United States of America, as representative of the class of all servicemen, instituted this action in the United States District Court of Connecticut. Summary judgment was requested, declaring that Sec. 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, (hereinafter referred to as the Act) immunized non-resident servicemen stationed in Conncticut from paying sales and use taxes.

Sec. 514 of the Soldiers' and Sailors' Civil Relief Act effectively granted non-resident servicemen immunity from state income and personal property taxes. The question presented was whether the Congress intended the Act to encompass sales and use taxes.

The District Court dismissed Lieut. Schuman's claim for want of jurisdiction but awarded summary judgment to the United States, permitting, however, the State of Connecticut to continue collecting the disputed taxes, subject to refund, from non-resident servicemen until the ultimate determination of this case.

The questions presented are so substantial that they require plenary consideration, with briefs on the merits and oral argument.

Substantiality of Questions Presented

A. This is a case of first impression before this Court.

In 1942 Congress first enacted Sec. 514 of the Soldiers' and Sailors' Civil Relief Act. Until the present case, neither the Supreme Court of the United States nor any other court

has had an opportunity to consider the question of whether the Act extends to nonresident servicemen immunity from sales and use taxes.

B. The cases cited by the Lower Court do not support its opinion.

Cases interpreting Sec. 514 of the Act are few. The principal cases interpreting Sec. 514 and the major cases relied upon by the Court of Appeals in arriving at its decision are *Dameron* v. *Brodhead* and *California* v. *Buzard*.

In *Dameron* v. *Brodhead*, 345 U. S. 322, (1952) the issue did not involve a sales or use tax. The Court simply decided that under the Act a *personal property tax* could not be imposed on a nonresident serviceman by the state of military station irrespective of whether the domiciliary state imposed a similar tax on that property.

In *California* v. *Buzard*, 382 U. S. 386 (1966), the Court did not have an opportunity to consider the Act and its relation to a sales and use tax. That case was a criminal case involving refusal to pay an *annual license fee* on an automobile, which fee was specially enacted to replace local ad valorem taxation of automobiles in California. The California sales and use tax act was not in issue before the Court.

In both decisions this Court emphasized that Sec. 514 of the Soldiers' and Sailors' Relief Act of 1940, as amended, provided a nonresident serviceman present in a state in compliance with military orders with a broad immunity from the state's *personal property* and *income taxation* and that the Act should be liberally construed within the framework of the immunity specifically granted. In neither case did this Court use language which would warrant the application of such liberal construction for the purpose of extending the scope of tax immunity by implication to sales and use taxes. Such ex-

tension should be delineated by congress, which has established the present limits.

C. Legislative history of Sec. 514.

In interpreting the Act, the Court of Appeals found no direction in the legislative history since it is silent with respect to sales and use taxes. We respectfully submit, in consistently referring to the scope of the Act to include *property* and *income taxes*[2] Congress clearly circumscribed the scope of the immunity granted.

Congress evidenced its recognition of *sales and use taxation* as a distinct type of taxation in the Buck Act, 4 U.S.C. 104-110 (1940). There, in legislation enacted in the same year as the Soldiers' and Sailors' Civil Relief Act, Congress specifically permitted *income taxation* and *sales and use taxation* by states in a federal enclave. On this basis, we submit by consistent enumeration of *property tax* and *income tax* immunity in the legislative history of the Soldiers' and Sailors' Civil Relief Act, Congress clearly indicated its will not to grant immunity from *sales and use taxes*.

D. The decision is of national importance.

As a result of the lower Court decision, Connecticut, along with most of the forty-four other states relying on sales and use tax revenue, will face a loss of essential revenue and a disproportionate disruption of the orderly administration of tax collection.

The sales and use tax is Connecticut's greatest revenue producer. Athough the lower Court decision removes only a small segment of taxpayers from its purview, it will thoroughly disrupt the entire system of taxation.

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[2]See S. Rep. No. 959, 78th Cong., 2d Sess. 1 (1944) See Appendix, Page 73A; H. R. Rep. No. 1514, 78th Cong., 2d Sess. 2 (1944) See Appendix, Page 82A.

Retailers responsible for collection of the tax[3] must not only satisfy themselves that the purchaser is a serviceman stationed in Connecticut, domiciled elsewhere and on active duty, but they must further retain sufficient proof to satisfy their burden of proving to the State of Connecticut that the sale was free from tax.

Unfortunately, the detrimental effects to Connecticut and the other states does not end there. Since the lower Court's decision was partially grounded on the language of Sec. 514 (1) "taxation in respect of . . . personal property", subsequent judicial opinions might well extend the decision to afford immunity to non resident servicemen from the state's cigarette tax upon the purchase of cigarettes, the state's alcohol tax upon the purchase of alcohol, and the state's gasoline tax upon the purchase of gasoline.

E. The constitutionality of Sec. 514 as interpreted by the lower Court is in doubt.

The issue of the constitutionality of Sec. 514 of the Act was placed before this Court in *Dameron* v. *Brodhead*, 345 U.S. 322 (1952).

Brodhead alleged Sec. 514 was unconstitutional on the ground that it infringed on the reserved power of the states to lay taxes.

This Court, however, held that Sec. 514 was constitutional, since the tax immunity created was a necessary and proper implementation of the power "to declare war", U. S. Const., Art. 1, Sec. 8, cl. 11, and the power "to raise and support armies". Ibid., cl. 12. Significantly, this Court continued, "What has been said in no way affects the reserved power of the states to tax. For this statute merely states that the tax-

[3]Conn. Gen. Stat. (Rev. 1958), 12-408(2)

able domicile of servicemen shall not be changed by military assignments." *Dameron* v. *Brodhead* supra, p. 325.

The decision of the lower Court has so broadened the interpretation of Sec. 514 as to render the above statement of this Court a nullity. It would appear from the lower Court's rationale herein that any tax which is ultimately passed on to the nonresident serviceman in connection with the sale of tangible personal property comes within the immunity of Sec. 514.

Accordingly, Connecticut and all the other states are now faced with the spectre of granting to nonresident servicemen immunity from taxation on their purchases of cigarettes and gasoline. In addition to the revenue loss, it is obvious that the administrative problems will be insurmountable.

F. A congressional grant of immunity from state taxation must be expressly conferred.

Sec. 514 does not expressly provide immunity from taxation. Rather, it states that the taxable domicile of servicemen shall not be changed by military assignments.

This Court has consistently held that tax immunity must be conferred expressly. It cannot be granted by implication. *Oklahoma Tax Comm.* v. *United States,* 319 U. S. 598, 604; *Graves* v. *New York ex rel O'Keefe,* 306 U.S. 466, 480.

Since Sec. 514 does not specifically grant servicemen exemption from sales and use taxes, we submit the lower court erred in construing Sec. 514 as providing such tax exemption by implication. *United States Trust Co.* v. *Helvering, Comm. of Int. Rev.,* 307 U. S. 60.

CONCLUSION

This is a case of first impression involving substantial legal questions which require plenary consideration by this Court in order to finally determine the rights of the states in an area of taxation which seriously affects their revenues and administrative burdens.

Respectfully submitted,

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Assistant Attorney General

Attorneys for Appellants

PROOF OF SERVICE

I, F. Michael Ahern, Assistant Attorney General of the State of Connecticut, and a member of the Bar of the Supreme Court of the United States, do hereby certify that on October 7, 1968, pursuant to Rule 33(2a) of the Rules of the Supreme Court of the United States, I served a copy of the foregoing Jurisdictional Statement on the Honorable Erwin Griswold, Solicitor General of the United States, by depositing the same enclosed in a sealed envelope, postage prepaid, in the United States mails, addressed to him at his last known address, viz:

HONORABLE ERWIN GRISWOLD
Solicitor General of the United States
Department of Justice
Washington, D. C. 20530

Dated this 7th day of October, 1968.

F. MICHAEL AHERN
Assistant Attorney General
State of Connecticut

In The

Supreme Court of the United States

OCTOBER TERM, 1968

No.

UNITED STATES OF AMERICA, and LIEUTENANT STANLEY D. SCHUMAN, U. S. N., a member of the armed forces of the United States on active military service not a resident of or domiciled in the State of Connecticut, suing on behalf of himself and all servicemen or former servicemen similarly situated and affected,

Appellees,

v.

JOHN L. SULLIVAN, Tax Commissioner of the State of Connecticut; GERALD A. LAMB, Treasurer of the State of Connecticut; LOUIS I. GLADSTONE, Comptroller of the State of Connecticut; and ROBERT K. KILLIAN, Attorney General of the State of Connecticut,

Appellants.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 427 — September Term, 1967.

(Argued May 16, 1968 Decided July 10, 1968.)

Docket No. 32007

UNITED STATES OF AMERICA, and LIEUTENANT STANLEY D. SCHUMAN, U. S. N., a member of the armed forces of the United States on active military service not a resident of or domiciled in the State of Connecticut, suing on behalf of himself and all servicemen or former servicemen similarly situated and affected,

Plaintiffs-Appellees,

— against —

JOHN L. SULLIVAN, Tax Commissioner of the State of Connecticut; GERALD A. LAMB, Treasurer of the State of Connecticut; LOUIS I. GLADSTONE, Comptroller of the State of Connecticut; and ROBERT K. KILLIAN, Attorney General of the State of Connecticut,

Defendants-Appellants.

Before:

MOORE, HAYS and FEINBERG,

Circuit Judges.

Appeal from a judgment of the United State District Court for the District of Connecticut, M. Joseph Blumenfeld, J., which granted the government's motion for summary judgment declaring that collection of Connecticut's sales and

use taxes from nonresident servicemen present in the state solely pursuant to military orders contravened section 514 of the Soldiers' and Sailors' Civil Relief Act, 50 U. S. C. App. § 574. Affirmed.

FEINBERG, *Circuit Judge*:

This case was brought by the United States of America[1] against various officials of the State of Connecticut to determine whether servicemen present in Connecticut solely by reason of military orders are subject to Connecticut's sales and use taxes. The United States District Court for the District of Connecticut, M. Joseph Blumenfeld, J., granted the motion of the United States for summary judgment, 270 F. Supp. 236 (1967), on the ground that collection of such taxes contravened section 514 of the Soldiers' and Sailors' Civil Relief Act, 50 U. S. C. App. §574[2] Defendants appealed; we affirm.

Like most states, Connecticut levies a broad pattern of sales and use taxes on its residents. Conn. Gen. Stats. §§12-406 to -432a. With certain exceptions, all retail sales of tangible personal property are subject to the sales tax. The retailer pays the state three and one-half per cent of his gross receipts on goods subject to the tax, section 12-408(1); in turn, he is entitled to reimbursement from the customer. Sections 12-408(2), (3). The use tax, section 12-411, is imposed at the

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[1]Lieutenant Stanley D. Schuman, U. S. N., was also a plaintiff below, having brought a class action pursuant to Fed. R. Civ. P. 23 on behalf of himself and all other servicemen similarly situated. The district court dismissed his complaint for lack of jurisdiction, and no appeal has been taken.

[2]Plaintiff also sought an injunction against further collections of the taxes; before the decision, however, counsel for both parties agreed that declaratory relief would suffice to secure the state's compliance. The court permitted Connecticut to continue collecting the taxes pending the outcome of the appeal. It has been stipulated that if the district court's decision is ultimately upheld, all taxes improperly collected since June 28, 1964, will be refunded upon proper application.

same rate on the "storage, use or other consumption" in Connecticut of "tangible personal property" purchased from a retailer for such storage, use or other consumption. Under the use tax, the customer is directly liable to the state, although if the purchase is made from a Connecticut retailer who collects the tax, the customer is relieved of liability. Section 12-411 (2). Sales of motor vehicles, boats and airplanes from other than licensed dealers are also subject to the use tax. Section 12-431. When a Connecticut sales tax has been collected, the use tax does not apply. Section 12-413(1). Finally, whether a sales or use tax has been collected, all proceeds are to be used exclusively for "public health, welfare and education purposes." Section 12-432.

In the district court, the United States offered some examples of the imposition of these taxes on naval personnel domiciled in other jurisdictions but stationed in Connecticut. Lieutenant Stanley D. Schuman of Nebraska[3] and Commander Kent J. Carroll of Michigan both purchased used motorboats in Connecticut from non-dealers. Schuman paid the use tax under protest; Carroll refused to pay. Commander Clyde H. Shaffer of Pennsylvania purchased a new car from a Connecticut dealer who collected the sales tax. Commander Jerome W. Roloff of Wisconsin bought a used car in Florida, and paid a sales tax there. When he subsequently registered the car in Connecticut, he was required to pay the difference between the Florida sales tax and the Connecticut use tax. Finally, Commander William L. Foster purchased a new car from a Connecticut dealer and at the same time registered it in Texas, his home state, paying a Texas sales tax. Nevertheless, the dealer collected a full Connecticut tax.

The sole question on appeal is whether these purchases, and others like them, were exempt from Connecticut's sales

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[3]Schuman at the time of filing the complaint was both a domiciliary and resident of Nesbraska; the other personnel listed above had similar connections with their states of origin.

and use taxes because of section 514 of the Soldiers' and Sailors' Civil Relief Act.[4] In relevant part, that section provides, 50 U. S. C. App. § 574:

> (1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income by any State . . . such person shall not be deemed to have lost a residence or domicile in any State . . . solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State . . . while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income or gross income of any such person by any State . . . of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State . . . and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State . . . . Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders: *Provided*, That nothing contained in this section shall prevent taxation by any State . . . in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. . . .
>
> (2) When used in this section, (a) the term "per-

[4] It has been stipulated that Connecticut cannot tax sales to servicemen made by military exchanges or commissaries operated by the armed services on military installations. Such sales are exempt under the Buck Act, 4 U. S. C. § 107.

sonal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *Provided*, That the license, fee, or excise required by the State . . . of which the person is a resident or in which he is domiciled has been paid.

The basic purpose of section 514, as it now reads, is clear from its wording and structure. It defines the residence of servicemen, the source of their income, the situs of their property, and the nature of taxation, all for the purpose of exempting servicemen from certain forms of taxation by states in which they are stationed. Section 514(1) first provides that a serviceman shall not lose his home state residence or domicile because of absence due to military orders. Correlatively, it also states that he shall not acquire a residence or domicile in a host state because of his presence there under the same military requirement. It then illustrates the consequences of these provisions. For the purpose of state taxation on income, compensation for military service "shall not be deemed income . . . from sources within" any state of which the serviceman is not a resident. For the purpose of taxation "with respect to personal property, or the use thereof," that property shall not be deemed "to have a situs for taxation" in the host state. Thus, section 514(1) eliminates jurisdictional grounds that otherwise could support taxation by the host state related to the income or personal property of a serviceman. The broad nature of section 514(1) is also made clear by the definitions in section 514(2), which provide that "the term 'personal property' shall include tangible and intangible property (including motor vehicles)," and that "the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof."[5]

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[5]Subsection (2) was added to § 514 in 1944, as discussed below.

In considering whether Connecticut's sales and use taxes are affected by section 514, we turn from its broad design to its details, recognizing that while the face of the statute is not always the end of its interpretation, cf. *In re Miracle Mart, Inc.*, Slip Op. 2533 (2d Cir. June 3, 1968), it is undeniably a good place to start. In arguing that nonresident servicemen stationed in Connecticut are exempt from these state taxes, the United States relies on the language of section 514, which by its terms affects taxation "in respect of . . . personal property." The Connecticut use tax is explicitly levied on the storage, use or consumption in Connecticut of "tangible personal property" purchased from a retailer for such use, and the amount of tax is computed by reference to the "sales price of the property." By its very terms, this is a tax "in respect of . . . personal property." The statutory phrase has a generous reach. The United States argues that it would seem to encompass all taxes, no matter how labelled, which pertain or relate to personal property, rather than to be limited to taxes *on* personal property. Certainly, if a nonresident serviceman's personal property is deemed, in the words of the statute, not to be present in the state, it would be difficult to justify a use tax on it. We realize that this begs the question, for such ghostly absence is allowed only for the purpose of specified taxes, whose definition we must construe. But the assumption helps to show the connection between the tax and the physical present in the state of the personal property, a taxable nexus which seems to fall within the broad phrase "in respect of . . . personal property." Congress clearly had in mind the breadth of that language in removing from its effect taxes on a trade or business.[6] Moreover, section 514 twice specifically envisions the possibility of taxes involving the

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[6]Thus, section 514 also states: *Provided*, That nothing contained in this section shall prevent taxation by any State . . . in respect of personel property used in or arising from a trade or business, if it otherwise has jurisdiction.

"use" of property. Thus, subsection (1) states that the exemption from state taxation applies to taxation:

> with respect to personal property, *or the use thereof,* within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such [military] orders . . . . [Emphasis added.][7]

Similarly, subsection (2) states that:

> the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles *or the use thereof* . . . . [Emphasis added.]

The Connecticut sales tax, which is incurred at the time of purchase, is in terms based upon the retailer's privilege of sale, but what he must sell is "tangible personal property." Moreover, whatever the conceptual basis may be, the tax is in reality also assessed against the buyer of the "tangible personal property," as the Connecticut Supreme Court has held, see *Avco Mfg. Corp.* v. *Connelly*, 140 A. 2d 479, 484 (Conn. 1958), and as the statute explicitly requires. Section 12-408(2). See also *First Agricultural Nat'l Bank* v. *State Tax Commission*, 36 U. S. L. W. 4686, 4688-89 (U. S. June 17, 1968). Judge Blumenfeld pointed out in his thorough opinion, 270 F. Supp. at 243-44, that the sales and use taxes are:

> [C]omplementary and designed to promote equality of taxation on personal property whether purchased in state or out of state. . . . Connecticut has merged the purposes and imposition of the sales and use taxes to such an extent that they are but one tax in practical effect. Any distinction between them in the context of this case would be one of form only, not of substance. . . .

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[7]This language was added to § 514 in 1962, under circumstances discussed below.

> Each tax hits with equivalent impact on the personal property of a nonresident serviceman. The fact that the statutory scheme for payment of the sales tax which puts the burden of collecting it on the retailer, with the right to enforce its payment by suit against the buyer, is substituted for a lien on the property itself hardly establishes that the property is not being taxed. . . . No matter which attribute of possessory interest in the property is hit — initial acquisition of ownership, or continued retention — it is always the nonresident serviceman who is hurt when the tax is levied. [Citations omitted.]

See also *Halliburton Oil Well Cementing Co.* v. *Reily*, 373 U. S. 64, 66 (1963); *Henneford* v. *Silas Mason Co.*, 300 U. S. 577, 581-83 (1937). In addition, as with the use tax, the sales tax is computed as a percentage of the property's value, as approximated by its sales price. These basic characteristics indicate that the sales tax also falls within the definition of a tax "in respect of . . . personal property."

The state's argument to us makes much of the theoretical distinction between an income tax or a property tax, on the one hand, and a privilege tax, on the other. The point is made that section 514 recognizes this difference and affects only the former type, while a sales or use tax is obviously the latter. Of course, this distinction may be useful for analysis in some instances, but section 514 does not in terms make it.[8] Because a tax "in respect of" property would appear to be broader than a tax "on property, citations to show that a use tax is not a tax "on" property[9] are not controlling.

The language of section 514, therefore, is helpful to plaintiff United States rather than to Connecticut. However, the state finds support in the statute's silence on the subject

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[8]See also the discussion of *California* v. *Buzard*, 382 U. S. 386 (1966).
[9]E.g., *Henneford* v. *Silas Mason Co.*, 300 U. S. 577, 582 (1937); *Connecticut Light & Power Co.* v. *Walsh*, 57 A. 2d 128 (Conn. 1948).

of sales and use taxes. It points out that when Congress in 1944 revised section 514 to read essentially as it does today, state sales and use taxation was already widespread. Therefore, argues the state, if Congress had intended to preclude such taxation of nonresident servicemen, it would have said so.

An argument based on silence is difficult to deal with, since inferences can be drawn either way; e.g., if Congress had wanted to allow state sales and use taxation, it could have said so in the proviso which permits normal "trade or business" taxes.[10] The legislative history is not informative on this specific point, for we find no mention of sales or use taxes. However, we do discern there a significant concern for the welfare of the serviceman, see, e.g., H. R. Rep. No. 2198, 77th Cong., 2d Sess. 2 (1942), consistent with the Supreme Court's instruction to us to read the Act "with an eye friendly to those who dropped their affairs to answer their country's call." *Le Maistre* v. *Leffers*, 333 U. S. 1, 6 (1948). Section 514 was first enacted in 1942 to protect servicemen against the undue burdens of multiple taxation to which movement around the country under military orders might subject them.[11] In 1944, Congress amended the statute to make it absolutely clear that taxation in respect of nonresident servicemen's "personal" property was impermissible even if not based on the serviceman's residence or domicile.[12] Moreover, even though a contrary interpretation was possible, the Supreme Court later held in *Dameron* v. *Brodhead*, 345 U. S. 322, 326 (1953), that Congress did not restrict the statute's effect to actual incidents of double taxation:

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[10]See note 6 *supra*.

[11]See S. Rep. No. 1558, 77th Cong., 2d Sess. 11 (1942); H. R. Rep. No. 2198, 77th Cong., 2d Sess. 6 (1942); Hearings on H. R. 7029 Before the House Committee on Military Affairs, 77th Cong., 2d Sess. 28 (1942).

[12]See S. Rep. No. 959, 78th Cong., 2d Sess. 1 (1944); H. Rep. No. 1514, 78th Cong., 2d Sess. 2 (1944).

> In fact, though the evils of potential multiple taxation may have given rise to this provision, Congress appears to have chosen the broader technique of statute carefully, freeing servicemen from both income and property taxes imposed by any state by virtue of their presence there as a result of military orders. It saved the sole right of taxation to the state of original residence whether or not that state exercised the right. Congress, manifestly, though that compulsory presence in a state should not alter the benefits and burdens of our system of dual federalism during service with the armed forces. [Footnote omitted.]

In 1962, Congress felt it necessary to clarify the statute even further. A naval officer from New Jersey, stationed in Arlington, Virginia, had been on sea duty for over a year. While he was so engaged, Arlington County assessed a tax on the personal property that he had left in Virginia with his family. The county claimed that since the officer was no longer in Arlington under military orders, his personal property was not exempt from taxation, even though it could not have been taxed while he was there. The case was brought to the attention of Congress, which added the following sentence to subsection (1) of section 514:

> Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders . . . .

The new sentence was broader than the facts required, since it explicitly referred to the "use" of personal property as an object of the federal exemption, even though the Arlington case did not involve a use tax. As already noted, this added

language literally applies to the appeal now before us, whether or not Congress intended to broaden section 514. Plaintiff United States points out that if Congress only intended to clarify the statute, as seems to be the case,[13] then this supports the view that the statute already covered use taxes.[14] Otherwise, the logical conclusion would be that Congress simply made a mistake when it included the phrase "or the use thereof," an assumption which ignores the fact that the same phrase had already been in subsection (2) of section 514 for many years.

The most recent discussion of legislative intent appears in *California* v. *Buzard*, 382 U. S. 386 (1966). The Court there considered motor vehicle registration and license fees which had been imposed by California on an Air Force Captain from Washington. The car in question had been purchased in Alabama and brought to California; since it had never been in Washington, there was no duty to register it in that state. The Court construed section 514(2)(b) to mean that an automobile had to be registered in either the home state or the host state. Subsection (2) was added to section 514 in 1944 as part of the clarifying amendments which specifically stated that the exemption of section 514 applied to taxes relating to "personal" property. See note 12 *supra* and accompanying text. Subsection (2)(b) provides that the "taxation" referred to in section 514(1) includes "licenses, fees, or excises imposed in respect to motor vehicles or the use thereof . . . ." Then a proviso adds:

> *Provided*, That the license, fee, or excise required by the State . . . of which the person is a resident or in which he is domiciled has been paid.

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[13] See S. Rep. No. 2182, 87th Cong., 2d Sess. 1 (1962); H. R. Rep. No. 2126, 87th Cong., 2d Sess. 2 (1962).

[14] The case that gave rise to the 1962 amendment was eventually decided in *United States* v. *Arlington County*, 326 F. 2d 929 (4th Cir. 1964). The court there held that tax was barred even under the language before amendment.

Thus, the exemption for servicemen from motor vehicle taxes is explicitly stated in section 514(2)(b), and then modified in the proviso, to deal with a specific problem created by the breadth of section 514(1): whether a serviceman can escape all registration by keeping his car out of his home state.

The Court concluded in *Buzard* that the effect of the proviso to section 514(2)(b) was to narrow the exemption from state taxation granted by section 514(1). Thus, a host state could tax a serviceman's car for registration purposes if his home state had not done so. 382 U. S. at 391-92. However, the Court limited the effect of the proviso to taxes which were necessary to registration. California's license fee of two per cent "of the market value of the vehicle" was, under state law, not imposed as a tax "essential to the registration and licensing of the . . . vehicle." Rather, it served the state's revenue interests and was "raised to defray the general expenses of government." *Id.* at 395-96. The Court pointed out, *id.* at 393, that the license fee[15] there involved did not come within the exception to section 514(1)'s exemption because:

> The very purpose of § 514 in broadly freeing the nonresident serviceman from the obligation to pay property and income taxes was to relieve him of the burden of supporting the governments of the States where he was present solely in compliance with military orders.

Consequently, the Court held that the California motor vehicle taxe there under consideration was barred by section 514.

The language and approach of the Court in *Buzard* strongly suggest that but for the proviso to section 514(2)(b), the host state could not tax a nonresident serviceman's ve-

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[15]The facts in *Buzard* did not require the Court to consider whether California's "registration fee" of $8.00 was in a different category.

hicle at all because motor vehicles are obviously personal property. Although the taxes in the instant case are non-recurring, while those in *Buzard* appear to have been annual,[16] we think *Buzard* is broad enough to rule here. Connecticut's sales and use taxes are imposed for general revenue purposes; imposing such taxes on non-resident servicemen improperly places the burden of supporting Connecticut upon their shoulders. In addition, it is significant that the tax in *Buzard* was explicitly labelled a "privilege" tax;[17] yet the Court held that the broad language of section 514 barred its application to the Captain.

We conclude that the language and the spirit of section 514 call for affirmance of Judge Blumenfeld's decision. Connecticut contended at oral argument that this will cause immense administrative problems in differentiating non-resident servicemen from other customers. We do not think these problems insurmountable, or even seriously burdensome. In fact, Connecticut has already exempted other groups from its sales and use taxes, and no ill effect from these exemptions has been brought to our attention. See sections 12-412 (a) (the United States, the state or subdivisions), (e) (nonprofit charitable hospitals), (h) charitable and religious organizations).

The judgment below is affirmed.

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[16]California's Revenue & Taxation Code provides, in part: § 10751. A license fee is hereby imposed *for the privilege* of operating upon the public highways in this State any vehicle of a type which is subject to registration under the Vehicle Code.
§ 10752. The *annual* amount of the license fee shall be a sum equal to two (2) percent of the market value of the vehicle as determined by the department. [Emphasis addd.]

[17]See note 16 *supra*.

UNITED STATES OF AMERICA

—vs.—

JOHN L. SULLIVAN, TAX COMMISSIONER OF THE STATE OF CONNECTICUT, Et Al

CIVIL No. 11,928

MEMORANDUM OF DECISION

This is a suit by the United States and Lieutenant Stanley D. Schuman, U.S.N., on behalf of all nonresident or nondomiciliary military personnel now stationed in Connecticut against tax officials of the State of Connecticut. The Government seeks a judgment declaring that Connecticut's sales and use taxes (Chap. 219, Conn. Gen. Stat. § 12-406- § 12-432, Rev. of 1958, as amended) cannot be collected from nonresident servicemen in respect of property purchased or used by them in Connecticut consistently with the remedial provisions of Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 App. U.S.C. § 574 (1964)). A refund of all sums heretofore paid to Connecticut on account of said tax by military personnel who were neither residents nor domiciliaries of this state is also sought.

By agreement of counsel, the question of jurisdiction and the application for a preliminary injunction were postponed until the hearing on the merits.

I. Jurisdiction

The defendants, John L. Sullivan and others, public officials of the State of Connecticut, moved to dismiss the suit against them on the ground that Congress has denied to a federal court jurisdiction of such a case. The specific ground is that this suit is barred by act of Congress, 28 U.S.C. § 1341, which provides:

> "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such state."

This section grew out of the act of August 21, 1937 (Chap. 726, 50 Stat. 738) which generally withdrew jurisdiction from federal district courts to enjoin the collection of a state tax. See 1A J. Moore, Federal Practice ¶0.207, p. 2283 (1959 ed.).

Assuming that § 1341 is applicable, whether "a plain, speedy and efficient remedy may be had in the courts of [this] state" in the instant case is a difficult and close question. *Compare Hillsborough Township* v. *Cromwell,* 326 U.S. 620 (1946) *with Spector Motor Serv., Inc.* v. *McLaughlin,* 323 U.S. 101 (1944). But the question whether an adequate remedy exists in the state courts is a thicket which need not be entered.

Jurisdiction of this court in the case at bar is based on the fact that the United States is a party plaintiff. 28 U.S.C. § 1345. It is settled law that the right of the United States to sue as plaintiff in a federal district court is not limited by the provisions of § 1341. *Department of Employment* v. *United States,* 385 U.S. 355, 357-58 (1966); *United States* v. *Arlington County,* 326 F. 2d 929, 931 (4th Cir. 1964). The rule in this circuit has long been to the same effect. *United States* v. *Woodworth,* 170 F. 2d 1019 (2d Cir. 1948) (Frank, C. J.); *United States* v. *City of New York,* 175 F. 2d 75 (2d Cir.), *cert. denied,* 338 U.S. 885 (1949).

The defendants have attempted to distinguish the *Department of Employment* case from the instant action on the ground that the proprietary interest of the United States in its instrumentalities (e.g., the Red Cross as in *Department of Employment*) is more direct and immediate than the interest of the Government as representative of the class of its mil-

itary personnel. In deciding that there was sufficient interest in the United States to sue, the Supreme Court relied upon the authoritative force of an unbroken line of authority, foremost among which was *United States* v. *Arlington County*, supra, 326 F. 2d 929. See *Department of Employment* v. *United States*, supra, 385 U.S. 355, 358, n.6. *Arlington County*, like the instant action, was a suit by the United States to declare a state personal property tax invalid as in contravention of the Soldiers' and Sailors' Civil Relief Act of 1940. Its citation by the Supreme Court constitutes approval of the proposition that the United States in its capacity as a plaintiff representative of its military personnel is not bound by the restrictions of §1341.[1]

II.

Nor is the instant action barred by the general principle of sovereign immunity in that the State of Connecticut has not consented to this lawsuit. The sovereign immunity of a state may not be interposed as a defense when the United States is the party plaintiff. *Department of Employment* v. *United States*, supra at 358, citing *Monaco* v. *Mississippi*, 292 U.S. 313 (1934) and *Ex Parte Young*, 209 U.S. 123 (1908).

III.

And there is no merit to the defendants' contention that the present case should more properly be considered by a three-judge district court in view of 28 U.S.C. § 2281. A three-judge court is required by § 2281 only when an injunction against the operation or execution of a state statute is sought "upon the ground of the unconstitutionality of such statute." This has been construed to apply only when the state statute

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[1] An interesting analysis of the reasons for the nonapplicability of § 1341 restrictions to the United States as plaintiff is to be found in the opinion of Judge Haynsworth in *United States* v. *Livingston*, 179 F. Supp. 9, 11-12 (E.D. S.C. 1959). *aff'd per curiam*, 364 U. S. 281 (1960).

is challenged as directly conflicting with the mandate of the Federal Constitution. The remedy sought here, if granted, will not completely paralyze the entire operation of Connecticut's statute.

It is now settled that only one judge need sit where a state statute is alleged to be inoperative because of a federal statute which the Supremacy Clause of article VI of the Constitution declares pre-emptive of the state law. *Swift & Co.* v. *Wickham*, 382 U.S. 111 (1965), *overruling Kesler* v. *Department of Public Safety*, 369 U.S. 153 (1962). See *Query* v. *United States*, 316 U.S. 486 (1942).

Accordingly, the defendants' motion to dismiss the complaint because barred by the provisions of 28 U.S.C. § 1341 or for the other reasons enumerated above is denied.

The Merits

It has never been disputed[2] during the course of this proceeding that Connecticut has been assessing and collecting sales and use taxes from nonresident servicemen on active duty in respect of personal property purchased or used by them in Connecticut, other than in a trade or business.[3] Connecticut is one of several states which imposes a retailers' sales and use tax at a statutorily fixed rate against personal property purchased or used within the state. The statute under which such taxes are imposed by Connecticut is the Education, Welfare and Public Health Tax Act (Chap. 219, Conn. Gen. Stat. Rev. of 1958, as amended) commonly referred to as the "Sales and Use Tax Act" (§§ 12-406 to 432 Conn. Gen. Stat. Anno. 1958).

This case presents the question whether the provisions of

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[2]A Stipulation of Facts, dated May 24, 1967, is incorporated into this opinion.

[3]The "trade business" proviso is not applicable here.

the Soldiers' and Sailors' Civil Relief Act bars the defendants from collecting Connecticut sales and use taxes from nonresident servicemen present here in compliance with military orders.

I.

The key provision upon which the plaintiffs rely is part of a comprehensive remedial statute designed "to protect those who have been obliged to drop their own affairs and take up the burdens of the nation." *Boone* v. *Lightner*, 319 U.S. 561, 575 (1943). *Cf. LeMaistre* v. *Leffers*, 333 U.S. 1, 6 (1943). It is found in Section 514(1) (50 App. U.S.C. § 574 (1)) of the Soldiers' and Sailors' Civil Relief Act:

> "For the purpose of taxation in respect of *personal property* . . . of any such [military] person by any State, Territory, possession, or political subdivision of any of the foregoing, . . . of which such person is not a resident or in which he is not domiciled . . ., [his] *personal property shall* not be deemed to be located or present in or to *have a situs for taxation in such State, Territory, possession or political subdivision* . . . . (Emphasis added).

The emphasized words were added to the original version of the Soldiers' and Sailors' Civil Relief Act by amendment on July 3, 1944 (58 Stat. 722). A major reason for the enactment of the amendment was that the prior law did "not prevent the State of 'temporary residence' from taxing tangible personal property actually located in such State so long as the tax does not depend on residence or domicile." S. Rep. No. 959, 78th Cong. 2d Session. 1 (1944). See H.R. Rep. No. 1514, 78th Cong. 2d Sess. 2 (1944).

When the section was amended again in 1962 (76 Stat.

768, Oct. 9, 1962)[4], it was subjected to legislative scrutiny without touching this particular provision because the Senate Committee regarded it as already making it "clear that a serviceman, living with his family and owning personal property in a State other than his State of domicile, is not subject to taxation on his personal property by the nondomiciliary State." S. Rep. No. 2182, 87th Cong. 2d Sess. 1 (1962), accompanying H.R. 9747, U.S. Code Cong. & Adm. News 1962, p. 2841. Such approval by a legislative body is meaningful. *Cf. Electric Storage Battery Co.* v. *Shimadzu*, 307 U.S. 5, 14 (1939).

II.

Connecticut's use tax is an excise "imposed on the storage, use or other consumption in this state of tangible personal property purchased from any retailer for storage, use or other consumption in this state. . . ." Conn. Gen. Stat. § 12-411. See *Stetson* v. *Sullivan*, 152 Conn. 649, 211 A. 2d 685 (1965).

Although in the words of the statute a sales tax is imposed "for the privilege of selling tangible personal property at retail . . . .," Conn. Gen. Stat. § 12-408(1), the retailer is required to collect the tax from the consumer, and the consumer is obligated to pay the tax to the retailer. Conn. Gen. Stat. § 12-408(2). Both sales and use taxes are at the rate of 3-½% of the sales price.

The defendants contend that Connecticut's sales and use taxes do not fall within the scope of the federal statute's ban against taxation "in respect of personal property."

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[4]The 1962 Amendment, not relevant here, provided that a serviceman domiciled in State Y, with a "temporary residence" in State X could not be subjected to a personal property tax by State X, when the serviceman was temporarily out at sea or assigned to a third State but had left his family and personal property behind in State X. 76 Stat. 768 (1962). See *United States* v. *Arlington County*, supra, 326 F. 2d 929.

The breadth and sweep of this phrase has widened under the impact of two recent Supreme Court cases. In *Dameron* v. *Brodhead,* 345 U.S. 322 (1953), the petitioner was a commissioned officer of the United States Air Force, who resided in Denver, Colorado, while stationed at a nearby base. The local taxing authority assessed a tax on certain household goods comprising petitioner's personal property. This was duly paid. In the subsequent suit for refund, the state argued that the Soldiers' and Sailors' Civil Relief Act did not bar the tax since Louisiana, the state of petitioner's domicile, had not taxed the property: The federal law, it was argued, barred only multiple taxation and if the state of permanent residence or domicile did not tax, the state of "temporary residence" was free to do so. The Suprme Court rejected this narrow construction:

> "In fact, though the evils of potential multiple taxation may have given rise to this provision, Congress appears to have chosen the broader technique of the statute carefully, freeing servicemen from both income and property taxes imposed by any state by virtue of their presence there as a result of military orders. It saved the sole right of taxation to the state of original residence whether or not that state exercised the right. Congress, manifestly, thought that compulsory presence in a state should not alter the benefits and burdens of our system of dual federalism during service with the armed forces." *Dameron* v. *Brodhead,* supra, 345 U.S. at 326.

The state would distinguish *Dameron* from this case since the tax there was a recurring personal property tax, not a one-time excise imposed upon a transaction or registration. Such a distinction cannot survive the facts and logic of *California* v. *Buzard,* 382 U.S. 386 (1966).

The state tax in *Buzard* was a 2% "license fee" imposed by California Revenue and Taxation Code in addition to an

$8.00 fee for the registration of an automobile. The Supreme Court was primarily concerned with § 514(2)(b) of the Soldiers' and Sailors' Civil Relief Act,[5] which allows the state of "temporary residence" to impose a "license, fee, or excise" if such a tax is (1) owing to and assessed by the home state, and (2) not yet paid to the home state by the serviceman. The Supreme Court limited the tax that could be assessed under § 514(2)(b) to the amount needed to support the functioning of the licensing and registration procedures of the state of "temporary residence." California was not permitted to assess a "license fee" under the proviso in § 514(2)(b) against an automobile owned by a non-resident serviceman in connection with registration of that automobile where the 2% tax imposed was for general revenue purposes.

The Court ruled at the outset of its opinion that California could collect the 2% tax "*only* if it . . . [was] a 'license, fee, or excise' on a motor vehicle or its use." (382 U.S. 392-93). Since the sole tax which could legally be imposed on motor vehicles was that allowed by § 514(2)(b) and the amount of this tax was limited to that necessarily incident to registration and licensing of vehicles, the implication that no additional amount could be taxed for the use of the automobile is clear.

No viable distinction can be drawn between automobiles and other forms of personal property. The import of *Buzard* is that a state may not tax personal property of non-resident servicemen under any label, except within the limited and sharply defined registration and license exceptions contained in § 514(2)(b).

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[5]Section 514(2)(b) (50 App. U. S. C. § 574(2)(b)) provides: "The term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vhicles or the use thereof: *Provided*, that the license, fee, or excise required by the State . . . of which the person is a resident or in which he is domiciled has been paid."

The Connecticut use tax (§ 12-411 et seq.) on the "storage, use or other consumption" of personal property in this state is therefore a tax prohibited by federal law from being imposed on nonresident servicemen.

III.

The state argues that the sales tax (§ 12-408 et seq.) is a tax on the transaction of purchase and not upon the ownership of personal property. This position must be rejected. Although imposed initially on the retailer "for the privilege of selling tangible personal property at retail" (§ 12-408(1)), the ultimate incidence of this tax falls on the purchaser from whom the retailer is required by statute to collect reimbursement (§12-408(2)). The Connecticut Supreme Court has conceded the ultimate incidence of the sales tax and has ruled that where the Federal Government is the ultimate purchaser, no tax can be levied. *Avco Mfg. Corp.* v. *Connelly,* 145 Conn. 161, 140 A. 2d 479 (1958).

Although the sales tax and use tax are distinct provisions, in terms and in concept for some purposes (see *Connecticut Light & Power Co.* v. *Walsh,* 134 Conn. 295, 300, 57 A. 2d 128 (1948)) in practical effect they are complementary and designed to promote equality of taxation on personal property whether purchased in state or out of state. *Avco Mfg. Corp.* v. *Connelly,* supra at 172.

Moreover, Connecticut imposes a use tax rather than a sales tax on the purchase of a motor vehicle, boat or airplane from other than a licensed dealer. Conn. Gen. Stat. § 12-431. Connecticut has merged the purposes and imposition of the sales and use taxes to such an extent that they are but one tax in practical effect. Any distinction between them in the context of this case would be one of form only, not of substance. The bulk of proceeds of both taxes are used indiscriminately

to promote the public health, welfare and education and for no other purpose. (§ 12-432).

Each tax hits with equivalent impact on the personal property of a nonresident serviceman. The fact that the statutory scheme for payment of the sales tax which puts the burden of collecting it on the retailer, with the right to enforce its payment by suit against the buyer, is substituted for a lien on the property itself hardly establishes that the property is not being taxed. *Cf. United States* v. *Allegheny County*, 322 U.S. 174, 187 (1944). And, although generally a property tax differs from a sales tax in being a recurrent annual demand on capital value instead of a single exaction on the initial transaction whereby ownership rights are acquired, in either case both legal incidence of the tax and the economic burden is imposed on the vendee. The difference in the rate does not change the incidence of the tax. Under whatever method the tax is enforced, or by whatever form its subject may be described, in substance the amount of the tax assessed is precisely determined by the value of the property. No matter which attribute of possessory interest in the property is hit — initial acquisition of ownership, or continued retention — it is always the nonresident serviceman who is hurt when the tax is levied.

Any confusion about concepts and definitions is considerably clarified by the rationale of the Soldiers' and Sailors' Civil Relief Act. The Congress was not measuring the exemption against particular concrete forms a state's tax might take. The rationale for the exception resulting in a certain measure of favored tax treatment which clearly emerges from the statute is that a nonresident serviceman should be exempt from "the burden of supporting the government of the States where he was present solely in compliance with military orders." *California* v. *Buzard*, supra, 382 U.S. at 393. *Dameron* v. *Brodhead*, supra, 345 U.S. 322.

Reading § 514 "with an eye friendly to those who dropped their affairs to anwer their country's call," *LeMaistre* v. *Leffers*, supra, 333 U.S. at 6, the imposition of the sales tax and the use tax must yield to the mandate of Congress. Accordingly, I hold that the phrase "taxation in respect of personal property" in § 514 embraces Connecticut's "Sales and Use" taxes.

IV.

The state also argues that Congress in enacting the Buck Act (4 U.S.C. §§104-110) has conferred upon the states jurisdiction to collect sales and use taxes "in any Federal area." 4 U.S.C. § 105. The Buck Act, it is contended, would conflict with any construction of the Soldiers' and Sailors' Civil Relief Act which would bar a state from collecting sales and use taxes. The adage that conflicting statutes must be construed so as to give effect to both is invoked. *United States* v. *Zacks*, 375 U.S. 59, 67-68 (1963). Accordingly, it is argued, the Soldiers' and Sailors' Civil Relief Act should not be construed to apply to sales and use taxes in order to avoid a conflict of federal statutes.

Section 105 of the Buck Act merely provides that no person "shall be relieved from liability . . . on the ground that the sale or use . . . occurred in whole or in part within a Federal area. . . ." The Soldiers' and Sailors' Civil Relief Act, however, gives relief from liability on an entirely different ground, namely, that the person taxed is a non-resident serviceman. The scope and purpose of the two statutes are entirely separate and distinct. There is no conflict between them. In granting states permission to impose sales taxes within the federal enclave Congress did not say that it granted authority to impose taxes on sales to nonresident servicemen generally.

V.

The state raises an affirmative defense that the Government is barred from bringing this suite under the doctrine of laches. The relevant words of § 514(1) (50 App. U.S.C. § 574 (1)) were added by amendment in 1944 and the Connecticut Sales and Use tax was enacted in 1947. Connecticut has, therefore, been collecting these taxes for twenty years. So the state argues. But the ostensible illegality of these assessments may not have become obvious until the very recent decisions of the United States Supreme Court in *Dameron* and *Buzard*. However, a decision on the merits as to whether laches existed need not be made.

It is a matter of well-settled law that the "United States is not bound by state statutes of limitation or subject to the defense of laches in enforcing its rights." *United States* v. *Summerlin*, 310 U.S. 414, 416 (1940). The principle has its roots deep in the common law. It is epitomized in the ancient maxim: *Nullum tempus occurrit regi.*[6] Today, the rule is not based so much on the prerogative of the sovereign as on the needs of public policy. *Guaranty Trust Co.* v. *United States*, 304 U.S. 126 (1938); *United States* v. *Thompson*, 98 U.S. 486 (1878). The principle was very recently confirmed in *Costello* v. *United States*, 365 U.S. 265, 281 (1961). In summary, the United States, as sovereign, is not subject to a defense of laches when it sues. That defense may not be interposed here.

But conceding that the Government may pursue this action for a declaratory judgment, it does not follow that indi-

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[6] An excellent analysis of the history and policy of the rule and maxim is to be found in *Guaranty Trust Co.* v. *United States*, supra, 304 U. S. at 132. Justice Stone traces its development from the *Magdalen College Case*, 11 Co. Rep. 66b, 74b and Bracton, De Legibus, Lib. ii, c. 5, § 7, down to the opinion of Judge Story in *United States* v. *Hoar*, Fed. Cas. No. 15, 373, pp. 329, 330. Judge Story states that the reason for the rule is "to be found in the great public policy of preserving the public rights, revenues, and property from injury and loss, by the negligence of public officers."

vidual servicemen may ignore the state procedure in claiming refunds for taxes already paid.

> "No refund shall be allowed unless a claim therefor is filed with the commissioner within three years from the last day of the month succeeding the quarterly period for which the overpayment was made, or, with respect to assessment made under sections 12-415 and 12-416, within six months after the assessments become final, or within six month from the date of overpayment, whichever period expires later. No credit shall be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the commissioner within such period, or unless the credit relates to a period for which a waiver is given pursuant to subsection (8) of section 12-415." Conn. Gen. Stat. § 12-425(2).

State law has been given effect as controlling the assessment date for property taxes even when a congressional exemption existed after a specified date. *Board of County Commissioners* v. *Seber*, 130 F. 2d 663, 670 (10th Cir. 1942), aff'd., 318 U.S. 705 (1943). Also,

> "In the absence of explicit legislative policy cutting across state interests, we draw upon a general principle that the beneficiaries of federal rights are not to have a privileged position over other aggrieved tax-payers in relations with the states or their political subdivisions." *Jackson County* v. *United States*, 308 U.S. 343, 352 (1939).

The Supreme Court explicitly avoided deciding the applicability of the state statute of limitations in a suit brought by private litigants to recover state taxes assessed and collected in violation of a specified federal exemption. *Ward* v. *Love County*, 253 U.S. 17, 25 (1920).

Moreover, the beneficiaries of the federally created exemption from state taxes in *Seber*, *Ward*, and *Jackson County* were American Indians. These people have long occupied a special position as wards of the United States.[7] A particularly favorable construction is to be accorded tax exemptions secured to the Indian people. *Carpenter* v. *Shaw*, 280 U.S. 363, 366-67 (1930). But, although a state cannot invalidate a federally created right, state law may implement its exercise in the interest of orderly administration.[8] *Board of County Commissioners* v. *Seber*, supra, 130 F. 2d at 670; see *Jackson County* v. *United States*, supra, 308 U.S. at 351-52 (Mr. Justice Frankfurter).

Accordingly, an individual serviceman seeking to recover sales and use taxes paid to Connecticut must comply with the three year statute and the procedure outlined in Conn. Gen. Stat. § 12-425(2). Connecticut law 'does not require formal protest' at time of payment in order to recover taxes paid, provided a claim for refund is made within the time specified in § 12-425(2).[9]

VI.

A final point remains to be considered. Besides the United States of America, Lt. Stanley D. Schuman, U.S.N., is a party plaintiff who sues for himself and on behalf of all servicemen or former servicemen similarly situated and affected, too numerous to be made parties. There undoubtedly are attributes to this action by him which would have been sufficient to

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[7]See the opinion of Mr. Justice Black in *Jackson County* v. *United States*, supra, 308 U.S. at 353. See also *Board of County Commissioners* v. *Seber*, supra, 318 U.S. at 715.

[8]This principle is applicable at least when the suit is by a private litigant, even if not controlling in a suit by the United States. *Compare City of New Orleans* v. *United States*, 371 F. 2d 21, 28 (5th Cir. 1967) *with United States* v. *Cocreham*, 247 F. Supp. 731, (E.D. La. 1965).

[9]See *District of Columbia* v. *McFall*, 188 F. 2d 991, 992 (D.C. Cir. 1951).

meet the prerequisites of Rule 23(a), Fed. R. Civ. P., for a class action,[10] and this case also fits neatly within the additional requirement of Rule 23(b)(2):

> [T]he party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole;"

But there is a significant deficiency in the pleadings. Even if this were to be treated as a class action brought by Lt. Schuman so as to permit aggregation of all the individual claims in order to establish the requisite jurisdictional amount under either 28 U.S.C. § § 1331 or 1332, this amount is not alleged to be in controversy. Considering that his own claim is for $21.53, an assumption that the requisite amount must exist is somewhat speculative. More significantly, the eleventh amendment forbids a suit by a private individual against a state in the federal courts. Nor does Connecticut's consent to be sued in its own court (Conn. Gen. Stat. § 12-422) impart its consent to be sued in a federal court. *Great Northern Life Ins. Co.* v. *Read*, 322 U.S. 47, 54 (1944; *Ford Motor Co.* v. *Department of Treasury of Indiana*, 323 U.S. 459, 465 (1945). Schuman's claim is dismissed for lack of jurisdiction without prejudice to his claim against the State of Connecticut.

The litigious situation presented by this case will be quite as fully benefited as a practical matter by granting the relief sought by the Government, for that will settle the legality of the state's refusal to honor the exemption from its sales

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[10]Rule 23(a) provides: "One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class."

and use taxes which § 514 of the Soldiers' and Sailors' Civil Relief Act requires. Commendably, counsel for both parties have agreed that declaratory relief rather than injunctive relief will suffice to secure the state's ready compliance with the court's ruling.

Accordingly, the court

DECREES and ADJUDGES that judgment enter declaring that each and all assessments and collections of sales or use taxes which defendants have made and are making in respect of personal property purchased or used in Connecticut by Schuman and other persons, who, at the time as of which the tax was or is levied, were or are members of the Armed Forces of the United States on active duty and residents of or domiciled in states other than Connecticut and absent from such states other than Connecticut and absent from such states solely by reason of compliance with military or naval orders, were and are in contravention of the Soldiers' and Sailors Civil Relief Act of 1940.

Dated at Hartford, Connecticut, this 28th day of June, 1967.

M. JOSEPH BLUMENFELD
United States District Judge

Soldiers' and Sailors' Civil Relief Act of 1940, c. 888, 54 Stat. 1178:

SEC. 514 [as added by Sec. 17, Soldiers' and Sailors' Civil Relief Act Amendments of 1942, c. 581, 56 Stat. 769; and as amended by Sec. 1, Act of July 3, 1944, c. 397, 58 Stat. 722; and Act of October 9, 1962, P.L. 87-771, 76 Stat. 768].

(1) For the purposes of taxation in respect of any person, or of his *personal* property, income, or gross in-

come, by any State, Territory, possession, or political subdivision of any of the foregoing or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while and solely by reason of being, so absent. For the purposes of taxation in respect of the *personal property*, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, *and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district.* [Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders:] *Provided, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political sub-division of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has*

jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to *October 6, 1942.*

(2) *When used in this section, (a) the term "personal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.*

(50 U.S.C. App. 1964 ed., Sec. 574).

* The italicized portions of Section 514 were added in 1944. The portion in brackets was added in 1962. Otherwise the Section is as it stood in 1942.

EDUCATION, WELFARE AND PUBLIC HEALTH TAX ACT (REV. 1958) AS AMENDED.

SEC. 12-406. Title. This chapter is known and shall be cited as the "Education, Welfare and Public Health Tax Act."

SEC. 12-407. Definitions. Whenever used in this chapter:

(1) "Person" means and includes any individual, firm, co-partnership, joint venture, association of persons however formed, social club, fraternal organization, corporation, estate, trust, fiduciary receiver, trustee, syndicate, the United States, this state or any political subdivision thereof or any group or combination acting as a unit, and any other individual or officer acting under the authority of any court in this state.

(2) "Sale" and "selling" mean and include: (a) Any transfer of title, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration; (b) any withdrawal, except a withdrawal pursuant to a transaction in foreign or interstate commerce, of tangible personal property from the place where it is located for delivery to a point in this state for the purpose of the transfer of title, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of the property for a consideration; (c) the producing, fabricating, processing, printing or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing or imprinting; (d) the furnishing and distributing of tangible personal property for a consideration by social clubs and fraternal organizations to their members or others; (e) the furnishing, preparing, or serving for a consideration of food, meals or drinks; (f) a transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price; (g) a transfer for a consideration of the title of tangible personal property which has been produced, fabricated or printed to the special order of the customer, or of an original visualization or design where the intrinsic value lies in the manual skill and imagination of the maker thereof and which is not produced by the maker for public exhibition; (h) a transfer for a consideration of the occupancy of any room or rooms in a hotel or lodging house for a period of thirty consecutive calendar days or less.

(3) "Retail sale" or "sale at retail" means and includes a sale for any purpose other than resale in the regular course of business of tangible personal property or a transfer for a consideration of the occupancy of any room or rooms in a hotel or lodging house for a period of thirty consecutive calendar days or less. The delivery in this state of tangible personal property

by an owner or former owner thereof or by a factor, if the delivery is to a consumer pursuant to a retail sale made by a retailer not engaged in business in this state, is a retail sale in this state by the person making the delivery. He shall include the retail selling price of the property in his gross receipts.

(4) "Storage" includes any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a retailer.

(5) "Use" includes the exercise of any right or power over tangible personal property incident to the ownership of that property, except that it does not include the sale of that property in the regular course of business.

(6) "Storage" and "use" do not include keeping, retaining or exercising any right or power over tangible personal property shipped or brought into this state for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.

(7) "Purchase" means and includes: (a) Any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property or of the occupancy of any room or rooms in a hotel or lodging house for a period of thirty consecutive calendar days or less for a consideration; (b) a transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price; (c) a transfer for a consideration of tangible personal property which has been produced, fabricated or printed to the special order of the

customer, or of any publication, except tangible personal property consisting of an original visualization or design where the intrinsic value lies in the manual skill and imagination of the maker thereof and which is not produced by the maker for public exhibition.

(8) "Sales price" means the total amount for which tangible personal property is sold or the total amount of rent received for occupancy, valued in money whether paid in money or otherwise, without any deduction on account of any of the following: (a) The cost of the property sold; (b) the cost of materials used, labor or service cost, interest charged, losses or any other expenses; (c) the cost of transportation of the property prior to its purchase. The total amount for which the property is sold or the total amount of rent received for occupancy includes all of the following: (a) Any services that are a part of the sale; (b) any amount for which credit is given to the purchaser by the seller. "Sales price" does not include any of the following: (a) Cash discounts allowed and taken on sales; (b) the amount charged for property returned by customers upon rescission of the contract of sale when the entire amount charged therefor is refunded either in cash or credit, and when the property is returned within ninety days from the date of purchase; (c) the amount charged for labor or services rendered in installing or applying the property sold; (d) the amount of any tax, not including any manufacturers' or importers' excise tax, imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer; (e) transportation charges separately stated, if the transportation occurs after the purchase of the property is made.

(9) "Gross receipts" means the total amount of the sales price, of the retail sales of retailers or the total amount of the rent received for occupancy, valued in money, whether received in money or otherwise, without any deduction on ac-

count of any of the following: (a) The cost of the property sold. However, in accordance with such regulations as the tax commissioner may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property; (b) the cost of the materials used, labor or service cost, interest paid, losses or any other expense; (c) the cost of transportation of the property prior to its sale to the purchaser. The total amount of the sales price includes all of the following: (a) Any services that are a part of the sale; (b) all receipts, cash, credits and property of any kind; (c) any amount for which credit is allowed by the seller to the purchaser. "Gross receipts" do not include any of the following: (a) Cash discounts allowed and taken on sales; (b) sales price of property returned by customers upon rescission of the contract of sale when the full sales price is refunded either in cash or credit, and when the property is returned within ninety days from the date of sale; (c) the price received for labor or services used in installing or applying the property sold; (d) the amount of any tax, not including any manufacturers' or importers' excise tax, imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer; (e) transportation charges separately stated, if the transportation occurs after the sale of the property is made to the purchaser.

(10) "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit or advantage, either direct or indirect.

(11) "Seller" includes every person engaged in the business of selling tangible personal property the gross receipts from the retail sale of which are required to be included in the measure of the sales tax and every operator as defined in subsection (18) of this section.

(12) "Retailer" includes: (a) Every person engaged in the business of making sales at retail or in the business of making retail sales at auction of tangible personal property owned by the person or others; (b) every person engaged in the business of making sales for storage, use or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use or other consumption; (c) every operator as defined in subsection (18) of this section; (d) every person soliciting orders within this state by means of mail order catalogs or other advertising circulars who, by reason thereof receives and accepts orders either within or without the state from the general public in this state for the sale and delivery of goods customarily sold in retail business establishments; (e) when in the opinion of the tax commissioner it is necessary for the efficient administration of this chapter to regard salesman, representative, peddler or canvasser as the agent of the dealer, distributor, supervisor or employer under whom he operates or from whom he obtains the tangible personal property sold by him, the tax commissioner may, in his discretion, treat and regard such agent as the retailer jointly responsible with his principal, employer or supervisor for the collection and payment of the tax imposed by this chapter.

(13) "Tangible personal property" means personal property which may be seen, weighed, measured, felt or touched or which is in any other manner perceptible to the senses.

(14) "In this state" or "in the state" means within the exterior limits of the state of Connecticut and includes all

territory within these limits owned by or ceded to the United States of America.

(15) "Engaged in business in the state" means selling in this state, tangible personal property for use, storage or consumption within the state or engaging in the transfer for a consideration of the occupancy of any room or rooms in a hotel or lodging house for a period of thirty consecutive calendar days or less. The term shall include but shall not be limited to the following acts or methods of transacting business: (a) Maintaining, occupying or using, permanently or temporarily, directly or indirectly, through a subsidiary or agent, by whatever name called, of any office, place of distribution, sales or sample room or place, warehouse or storage point or other place of business and (b) having any representative, agent, salesman, canvasser or solicitor operating in this state for the purpose of selling, delivering or taking orders of tangible personal property.

(16) "Hotel" means any buildings regularly used and kept open as such for the feeding and lodging of guests where any person who conducts himself properly and who is able and ready to pay for such services is received if there are accommodations for him and which derives the major portion of its operating receipts from the renting of rooms and the sale of food. "Hotel" shall include any apartment hotel wherein apartments are rented for fixed periods of time, furnished or unfurnished, while the keeper of such hotel supplies food to the occupants thereof, if required. (17) "Lodging house" means any building or portion of a building, other than a hotel or apartment hotel, in which persons are lodged for hire with or without meals, including, but not limited to, any motel, motor court, motor inn, tourist court or similar accommodation; provided the terms "hotel", "apartment hotel" and "lodging house" shall not be construed to include: (a) Privately owned and operated convalescent homes,

homes for the aged, infirm, indigent or chronically ill; (b) religious or charitable homes for the aged, infirm, indigent or chronically ill; (c) privately owned and operated summer camps for children; (d) summer camps for children operated by religious or charitable organizations, or (e) lodging accommodations at educational institutions. (18) "Operator" means any person operating a hotel or lodging house in the state, including, but not limited to, the owner or proprietor of such premises, lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such hotel or lodging house. (19) "Occupancy" means the use or possession, or the right to the use or possession, of any room or rooms in a hotel or lodging house, or the right to the use or possession of the furnishings or the services and accommodations accompanying the use and possession of such room or rooms, for a period of thirty consecutive calendar days or less. (20) "Room" means any room or rooms of any kind in any part or portion of a hotel or lodging house let out for use or possession for lodging purposes. (21) "Rent" means the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also any amount for which credit is allowed by the operator to the occupant, without any deduction therefrom whatsoever. ever.

SEC. 12-408. *The sales tax.* (1) *Imposition and rate.* For the privilege of selling tangible personal property at retail, or of transferring occupancy of any room or rooms in a hotel or lodging house in this state for a consideration, a tax is hereby imposed on all retailers at the rate of three and one-half per cent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail or, with respect to each such transfer of occupancy, from the total amount of rent received for such occupancy of any room or rooms in a hotel or lodging house for the first period of not exceeding thirty

consecutive calendar days, except that a rate of one and three-quarters per cent of such gross receipts on all sales of fourteen cents or less is hereby imposed in lieu of said rate of three and one-half per cent, provided the retailer making such sales shall keep records thereof acceptable to the tax commissioner. Upon his failure to keep such records, said rate of three and one-half per cent shall apply to all such sales. An amount equal to ten per cent of the gross revenue from the tax imposed on transfers of occupancy by this section for the last-preceding fiscal year is appropriated to the state development commission and shall be used by said commission for the promotion and development of the recreation industry of Connecticut, including, but not limited to, the vacation, travel, hotel, motel and restaurant businesses in this state. Said ten per cent thus appropriated may be used for the purchase of advertising and for the production and distribution of printed literature designed to promote greater vacation travel into the state. Not more than ten per cent of such appropriations shall be devoted to administrative costs including personnel.

(2) *Reimbursement.* Reimbursement for the tax hereby imposed shall be collected by the retailer from the consumer and such tax reimbursement, termed "tax" in this and the following subsections, shall be paid by the consumer to the retailer and each retailer shall collect from the consumer the full amount of the tax imposed by this chapter or an amount equal as nearly as possible or practicable to the average equivalent thereof. Such tax shall be a debt from the consumer to the retailer, when so added to the original sales price, and shall be recoverable at law in the same manner as other debts except as provided in section 12-432a.

(3) *Bracket system for adding and collecting tax.* For the purpose of adding and collecting the tax imposed by this chapter, or an amount equal as nearly as possible or practicable to the average equiva[illegible]reof, by the retailer from

the consumer the following bracket system shall be in force and effect as follows:

Amount of Sale	Amount of Tax
$0.01 to $0.14 inclusive	No Tax
.15 to .38 inclusive	1¢
.39 to .64 inclusive	2¢
.65 to .88 inclusive	3¢
.89 to 1.18 inclusive	4¢
1.19 to 1.57 inclusive	5¢
1.58 to 1.85 inclusive	6¢
1.86 to 2.14 inclusive	7¢

On all sales above $2.14, the tax shall be computed at the rate of three and one-half per cent.

(4) *Unlawful advertising.* No retailer shall advertise or hold out or state to the public or to any consumer, directly or indirectly that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the sales price of the property sold or that, if added, it or any part thereof will be refunded. Under the provisions of this section, however, a retailer may advertise the sale of tangible personal property by any of the following methods: By stating the sales price alone without reference to the tax; by stating separately the sales price and the amount of tax to be collected thereon; by stating the sales price "plus tax" or "exclusive of tax" or by stating a sales price which includes the tax, together with the words "tax included" or "tax incl."; provided the retailer in the case of all such sales shall maintain his records to show separately the actual price of such sales and the amount of the tax paid thereon; and provided such retailer, if requested, shall furnish the consumer with a sales slip or other like evidence of the sale, showing the tax separately computed thereon. Any person violating any provision of this subsection shall be fined not more than one hundred dollars for each offense.

(5) *Notices, signs or advertisements subject to approval.* No retailer shall exhibit or display on his premises any notice, sign or other advertising matter tending to mislead the public in connection with the imposition or collection of the tax. The tax commissioner may approve a form of notice for the purpose of explaining the operation of the tax.

SEC. 12-409. *Permits.* (1) *Permit required.* No person shall engage in or transact business as a seller within this state, unless a permit or permits have been issued to him as hereinafter prescribed.

(2) *Application for permit.* Every person desiring to engage in or conduct business as a seller within this state shall file with the commissioner an application for a permit for each place of business. Every application for a permit shall be made upon a form prescribed by the commissioner and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business and such other information as the commissioner requires. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application.

(3) *Permit fee.* At the time of making an application the applicant shall pay to the state tax commissioner a permit fee of one dollar for each permit.

(4) *Issuance and display of permit.* After compliance with subsections (1), (2) and (3) of this section by the applicant, the commissioner shall grant and issue to such applicant a separate permit for each place of business within the state. A permit is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at

the place designated therein. It shall at all times be conspicuously displayed at the place for which issued.

(5) *Reissuance of permit.* A seller whose permit has been suspended or revoked shall pay to the tax commissioner a fee of five dollars for the reissuance of a permit.

(6) *Revocation of permit.* Whenever any person fails to comply with any provision of this chapter relating to the sales tax or any regulation of the commissioner relating to the sales tax prescribed and adopted under this chapter, the commissioner, upon hearing, after giving such person ten days' notice in writing specifying the time and place of hearing and requiring him to show cause why his permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person. The notice may be served personally or by registered or certified mail. The commissioner shall not issue a new permit after the revocation of a permit unless he is satisfied that the former holder of the permit will comply with the provisions of this chapter relating to the sales tax and the regulations of the commissioner.

(7) *Unlawful acts.* Any person who violates any provision of this section shall be fined not more than fifty dollars for the first offense and not more than one hundred dollars for each subsequent offense. For the purpose of this subsection, the engaging in or conducting of a business as a seller in this state for each period of one week without a permit shall constitute a separate offense.

SEC. 12-410. *Presumptions and resale certificates.* (1) *Presumption of taxability; resale certificate.* For the purpose of the proper administration of this chapter and to prevent evasion of the sales tax it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who

makes the sale unless he takes from the purchaser a certificate to the effect that the property is purchased for resale.

(2) *Effect of certificate.* The certificate relieves the seller from the burden of proof only if taken in good faith from a person who is engaged in the business of selling tangible personal property and who holds the permit provided for in section 12-409 and who, at the time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose.

(3) *Form of certificate.* The certificate shall be signed by and bear the name and address of the purchaser, shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. The certificate shall be substantially in such form as the commissioner prescribes.

(4) *Liability of purchaser.* If a purchaser who gives a certificate makes any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the use shall be deemed a retail sale by the purchaser as of the time the property is first used by him, and the cost of the property to him shall be deemed the gross receipts from such retail sale. If the sole use of the property other than retention, demonstration or display in the regular course of business is the rental of the property while holding it for sale, the purchaser may elect to include in his gross receipts the amount of the rental charged rather than the cost of the property to him.

SEC. 12-411. *The use tax.* (1) *Imposition and rate.* An excise tax is hereby imposed on the storage, use or other consumption in this state of tangible personal property purchased from any retailer for storage, use or other consumption in this

state at the rate of three and one-half per cent of the sales price of the property.

(2) *Liability for tax.* Every person storing, using or otherwise consuming in this state tangible personal property purchased from a retailer is liable for the tax. His liability is not extinguished until the tax has been paid to this state, except that a receipt from a retailer engaged in business in this state or from a retailer who is authorized by the commissioner under such regulations as he may prescribe, to collect the tax and who is, for the purposes of this chapter relating to the use tax, regarded as a retailer engaged in business in this state, given to the purchaser pursuant to subsection (3) of this section is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

(3) *Collection by retailer.* Every retailer engaged in business in this state and making sales of tangible personal property for storage, use or other consumption in this state, not exempted under this chapter, shall, at the time of making the sales or if the storage, use or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use or other consumption becomes taxable, collect the use tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the commissioner. For the purpose of uniformity of tax collection by the retailer the tax brackets set forth in subsection (3) of section 12-408 pertaining to the sales tax shall be employed in the computation of the tax imposed by this section.

(4) *Tax as debt.* The tax required to be collected by the retailer constitutes a debt owed by the retailer to this state.

(5) *Unlawful advertising.* The provisions of subsection (4) of section 12-408 pertaining to the sales tax shall apply with equal force to the use tax.

(6) *Separate statement of tax.* The tax required to be collected by the retailer from the purchaser shall be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sales.

(7) *Unlawful acts.* Any person violating the provisions of subsection (3), (5) or (6) shall be fined not more than one hundred dollars.

(8) *Registration of retailers.* Every retailer selling tangible personal property for storage, use or other consumption in this state shall register with the commissioner and give the name and address of all agents operating in this state, the location of all distribution or sales houses or offices or other places of business in this state and such other information as the commissioner may require.

(9) *Presumption of purchase for use; resale certificate.* For the purpose of the proper administration of this chapter and to prevent evasion of the use tax and the duty to collect the use tax, it shall be presumed that tangible personal property sold by any person for delivery in this state until the contrary is established. The burden of proving the contrary is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is purchased for resale.

(10) *Effect of certificate.* The certificate relieves the person selling the property from the burden of proof only if taken in good faith from a person who is engaged in the business of selling tangible personal property and who holds the permit provided for by section 12-409 and who, at the time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose.

(11) *Form of certificate.* The certificate shall be signed by and bear the name and address of the purchaser, shall indicate the number of the permit issued to the purchaser and shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. The certificates shall be substantially in such form as the commissioner may prescribe.

(12) *Liability of purchaser.* If a purchaser who gives a certificate makes any storage or use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first so stored or used. If the sole use of the property, other than retention, demonstration or display in the regular course of business, is the rental of the property while holding it for sale, the purchaser may elect to pay the tax on the use measured by the amount of the rental charged rather than the sales price of the property to him.

(13) *Presumption of purchase from retailer.* It shall be presumed that tangible personal property shipped or brought to this state by the purchaser was purchased from a retailer for storage, use or other consumption in this state.

SEC. 12-412. *Exemptions.* Taxes imposed by this chapter shall not apply to the gross receipts from the sale of and the storage, use or other consumption in this state with respect to the following items:

(a) *The United States, the state or subdivisions.* Sales of tangible personal property to the United States, the state of Connecticut or any of the political subdivisions thereof, or its or their respective agencies.

(b) *Federal exemptions.* Sales of tangible personal property which this state is prohibited from taxing under the constitution or laws of the United States.

(c) *Gas, water, electricity, telephone and telegraph services.* The sale, furnishing or service of gas, water, electricity, telephone and telegraph when delivered to consumers through mains, lines or pipes.

(d) *Prescription medicines.* Sales of medicine only by prescription.

(e) *Nonprofit charitable hospitals.* Sales of tangible personal property to and by nonprofit charitable hospitals in this state for the exclusive purposes of such institutions.

(f) *Newspapers and magazines.* Sales of magazines by subscription and of newspapers.

(g) *Cigarettes.* Sales of cigarettes upon the sale of which a tax is imposed by the law of this state.

(h) *Charitable and religious organizations.* Sales of tangible personal property to charitable and religious organizations.

(i) *Educational institution meals.* Sales of food products and meals in a student cafeteria, dining-hall, dormitory, fraternity or sorority maintained in a private, public or parochial school, college or university, to members of such institutions or organizations.

(j) *Children's clothing.* Sales of articles of children's clothing, classified as such in accordance with the recognized standards of the trade, for the express and exclusive use of children and subject to regulations prescribed by the commissioner.

(k) *Personal services.* Professional, insurance or personal service transactions which involve sales as inconsequential elements for which no separate charges are made.

(l) *Livestock, rabbits and poultry; feed; seeds and tree seedlings; plants; fertilizer.* (1) Sales of livestock, rabbits and poultry of a kind which ordinarily constitute food for human consumption; (2) sales of feed, including the bags in which it is customarily contained, for livestock, rabbits and poultry of a kind which ordinarily constitute food for human consumption or are to be sold in the regular course of business; (3) sales of seeds and tree seedlings or transplants sold by the state forester under section 23-23; (4) sales of fertilizer. Fertilizer shall include ground limestone, hydrated lime, insecticides, fungicides, seed inoculants, seed disinfectants and plant hormones, as well as other substances commonly regarded in the same category and for the same use; (5) sales of plants, including parts of plants, suitable for planting to produce food for human consumption or when such plants, including parts thereof or the produce thereof, are to be sold in the regular course of business, including such item as seedpotatoes, onion sets, asparagus roots, berry plants or bushes and fruit trees. (6) Sales of draft horses.

(m) *Food products.* The sale of food products for human consumption. "Food products" include cereals and cereal products, milk and milk products, oleomargarine, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products other than candy and confectionery, coffee and coffee substitutes, tea, cocoa and cocoa products other than candy and confectionery. "Food products" do not include spirituous, malt, or vinous liquors, soft drinks, sodas or beverages such as are ordinarily dispensed at bars and soda fountains, or in connection therewith, medicines except by prescription, tonics and preparations in liquid, powdered, granular, tablet, capsule, lozenge and pill form sold as dietary supplements or adjuncts. "Food products" also do not include meals served on or off the premises of the retailer or drinks or foods furnished, prepared or

served for consumption at tables, chairs or counters or from trays, glasses, dishes or other tableware provided by the retailer, except for meals for which the purchaser is charged a total of less than one dollar as provided in subsection (q) of this section.

(n) *Containers.* (1) Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container; (2) containers when sold with the contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by this chapter; (3) returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling. As used herein, "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are "nonreturnable containers." Nothing in this subsection shall be construed so as to tax the gross receipts from the sale of or the storage, use or other consumption in this state of bags in which feed for livestock and poultry, as defined in subsection (l), is customarily contained.

(o) *Motor vehicle fuel.* There are exempted from the taxes imposed by this chapter the gross receipts from the distribution of and the storage, use or other consumption in this state of motor vehicle fuel the distribution of which in this state is subject to the tax imposed by the laws of this state.

(p) *Domestic fuel.* Sales of fuel used exclusively for domestic purposes.

(q) *Sales of meals.* The sale of a meal consisting of any of the items defined as food products in subsection (m) hereof for consumption on the premises and for which the purchaser is charged a total of less than one dollar. The exemption provided herein shall apply to the total charge for

each such meal separately computed, whether the purchaser pays for meals other than his own, or not. The gross receipts from all such meals costing less than one dollar shall be exempt from the tax imposed by this chapter, provided the retailer claiming such exemptions shall maintain adequate records to support the same, otherwise such gross receipts shall be subject to the tax.

(r) *Production materials.* Sales of and the storage, use or other consumption of materials, rope, fishing nets, tools and fuel or any substitute thereof, but excluding machinery or replacement parts thereof used in production, which become an ingredient or component part of tangible personal property to be sold or which are consumed and used directly in agricultural production or in the fishing industry or in an industrial plant in the actual fabrication of the finished product to be sold. The word "machinery" as used herein shall mean the basic machine itself including all of its component parts and contrivances, such as belts, pulleys, shafts, moving parts, operating structures and all equipment or devices used or required to control regulate or operate the machinery. For the purpose of this subsection, the raising of poultry and livestock shall be construed to be included in the term "agricultural production." Sales of and the storage, use or other consumption of materials, tools and fuel or any substitute thereof, but excluding machinery or replacement parts thereof, when such products are used and consumed directly in the furnishing of power to an industrial manufacturing plant or in the furnishing of gas, water, steam or electricity when delivered to consumers through mains, lines or pipes.

(s) *Oxygen; blood plasma; prostheses.* Sales of oxygen, blood or blood plasma when sold for medical use; sales of artificial devices individually designed, constructed or altered solely for the use of a particular crippled person so as to become a brace, support, supplement, correction or substitute

for the bodily structure, including the extremities of the individual; sales of artificial limbs, artificial eyes and other equipment worn as a correction or substitute for any functioning portion of the body, and artificial hearing aids when designed to be worn on the person of the owner or user; sales of crutches and wheel chairs for the use of invalids and crippled persons.

(t) *Flyable aircraft and equipment.* Sales of and the storage, use or other consumption of flyable aircraft complete with necessary equipment and modifications, but not separate engines and parts thereof, sold to persons taking delivery and using such aircraft as certificated or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United States or any foreign government, or sold to any foreign government for use by such government outside of this state, or sold to persons who are not residents of this state and who will not use such aircraft in this state otherwise than in the removal of such aircraft from this state.

(u) *Personal property for incorporation into water treatment facilities.* Sales of and the storage, use or other consumption of tangible personal property acquired for incorporation into facilities for the treatment of industrial waste before the discharge thereof into any waters of the state or into any sewerage system emptying into such waters, the primary purpose of which is the reductions, control or elimination of pollution of such waters, certified as approved for such purpose by the water resources commission. For the purposes of this subdivision "industrial waste" means any harmful thermal effect or any liquid, gaseous or solid substance or combination thereof resulting from any process of industry, manufacture, trade or business or from the development or recovery of any natural resource.

(v) *Personal property for incorporation into air pollu-*

tion control facilities. Sales of and the storage, use or other consumption of tangible personal property acquired for incorporation into facilities, the primary purpose of which is the reduction, control or elimination of air pollution, certified as approved for such purpose by the air pollution control commission.

SEC. 12-413. *Exemptions from use tax.* (1) *Where sales tax applicable.* The storage, use or other consumption in this state of property, the gross receipts from the sale of which are required to be included in the measure of the sales tax, is exempted from the use tax.

(2) *Property purchased from United States.* The storage, use or other consumption in this state of property purchased from any incorporated agency or instrumentality of the United States, except (a) any property reported to the Surplus Property Board of the United States or any successor thereto, as surplus property by any owning agency; and (b) any property included in any contractor inventory, is exempted from the use tax. "Surplus property," "owning agency," and "contractor inventory" as used in this section have the meanings ascribed to them in that act of the Congress of the United States known as the "Surplus Property Act of 1944."

(3) *Purchase brought into state by resident.* The use tax shall not apply to the purchase of any articles of tangible personal property which have been brought into this state on the person of a resident of this state when the purchase price of the same does not exceed twenty-five dollars; provided such purchase shall be for personal use or consumption in this state and not for use in consumption in carrying on a trade, occupation, business or profession.

SEC. 12-414. *Returns and payments.* (1) *Due date.* The taxes imposed by this chapter are due and payable to the

commissioner quarterly on or before the last day of the month next succeeding each quarterly period. "Quarterly period" means a period of three calendar months commencing on the first day of January, April, July or October of each year or, if any seller commences business on a date other than the first day of January, April, July or October, a period beginning on the date of commencement of business and ending on December thirty-first, March thirty-first, June thirtieth or September thirtieth.

(2) *Return.* On or before the last day of the month following each quarterly period of three months, a return for the preceding quarterly period shall be filed with the commissioner in such form as the commissioner may prescribe. For purposes of the sales tax a return shall be filed by every seller. For purposes of the use tax a return shall be filed by every retailer engaged in business in the state and by every person purchasing tangible personal property, the storage, use or other consumption of which is subject to the use tax, who has not paid the use tax due a retailer required to collect the tax, except that every person making such purchases for personal use or consumption in this state, and not for use or consumption in carrying on a trade, occupation, business or profession, need file only one individual use tax return covering purchases during a calendar year. Such return shall be filed and the tax due thereon paid on or before the last day of the month succeeding the end of the calendar year for which such return is filed. Returns should be signed by the person required to file the return or by his authorized agent but need not be verified by oath.

(3) *Contents of return.* For purposes of the sales tax the return shall show the gross receipts of the seller during the preceding reporting period. For purposes of the use tax, in case of a return filed by a retailer, the return shall show the total sales price of the property sold by him, the storage, use or consumption of which property became subject to the use

tax during the preceding reporting period; in case of a return filed by a purchaser, the return shall show the total sales price of the property purchased by him, the storage, use or consumption of which became subject to the use tax during the preceding reporting period. The return shall also show the amount of the taxes for the period covered by the return in such manner as the commissioner may require and such other information as the commissioner deems necessary for the proper administration of this chapter. The tax commissioner is authorized in his discretion, for purposes of expediency, to permit returns to be filed in an alternative form wherein the person filing the return may elect to report his gross receipts, including the tax reimbursement to be collected as provided for herein, as a part of such gross receipts or to report his gross receipts exclusive of the tax collected in such cases where the gross receipts from sales have been segregated from tax collections. In the case of the former, ninety-six and six-tenths per cent of such gross income may be considered to be the gross receipts from sales exclusive of the taxes collected thereon.

(4) *Filing return.* Returns, together with the amount of the tax due thereon, shall be filed with the tax commissioner.

(5) *Return periods.* The commissioner, if he deems it necessary in order to insure payment to or facilitate the collection by the state of the amount of taxes, may require returns and payment of the amount of taxes for other than quarterly periods.

(6) *Extension of time.* The commissioner for good cause may extend the time for making any return and paying any amount required to be paid under this chapter, if a written request therefor is filed with the commissioner together with a tentative return which must be accompanied by a payment of the tax, which shall be estimated in such tentative

return, on or before the last day for filing the return. Any person to whom an extension is granted shall pay, in addition to the tax, interest at the rate of one-half of one per cent per month, or fraction thereof, from the date on which the tax would have been due without the extension until the date of payment.

SEC. 12-415. *Deficiency assessments.* (1) *Deficiency assessments.* If the commissioner is not satisfied with the return of the tax or the amount of tax required to be paid to the state by any person, he may compute and assess the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his possession or that may come into his possession. One or more deficiency assessments may be made of the amount due for one or for more than one period.

(2) *Interest.* The amount of the assessment, exclusive of penalties, shall bear interest at the rate of one-half of one per cent per month, or fraction thereof, from the last day of the month succeeding the quarterly period for which the amount or any portion thereof should have been returned until the date of payment.

(3) *Offsets.* In making an assessment the commissioner may, in his discretion, offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties and against the interest on the underpayments. The interest on underpayments and overpayments shall be computed on the basis of one-half of one per cent per month, or fraction thereof, from the last day for the filing of the respective returns, but the allowance of interest on overpayments shall be limited to the provisions of this subsection and subsection (2) of section 12-416.

(4) *Ten per cent penalty.* If any part of the deficiency

for which a deficiency assessment is made is due to negligence or intentional disregard of this chapter or authorized regulations, a penalty of ten per cent of the amount of assessment shall be added thereto.

(5) *Twenty-five per cent penalty.* If any part of the deficiency for which an assessment is made is due to fraud or an intent to evade this chapter or authorized regulations, a penalty of twenty-five per cent of the amount of the assessment shall be added thereto.

(6) *Notice of assessment.* The commissioner shall give to the retailer or person storing, using or consuming tangible personal property written notice of his assessment. The notice may be served personally or by mail. If by mail, it shall be addressed to the retailer or person storing, using or consuming tangible personal property at his address as it appears in the records of the commissioner's office. In case of service by mail of any notice required by this chapter, the service is complete at the time of deposit in the United States post office or mail box.

(7) *Limitations; deficiency assessments.* Except in the case of fraud, intent to evade this chapter or authorized regulations, failure to make a return, or claim for additional amount pursuant to subsection (3) of section 12-418, every notice of a deficiency assessment shall be mailed within three years after the last day of the month following the quarterly period for which the amount is proposed to be assessed or within three years after the return is filed, whichever period expires later. The limitations specified in this subsection does not apply in case of a sales tax proposed to be assessed with respect to sales of property for the storage, use or other consumption of which notice of a deficiency assessment has been or is given pursuant to subsection (6) of this section, subsection (5) of section 12-416, subsection (2) of section 12-417 and this subsection. The limitation specified in this subsection

does not apply in case of an amount of use tax proposed to be assessed with respect to storage, use or other consumption of property for the sale of which notice of a deficiency assessment has been or is given pursuant to said subsections and this subsection.

(8) *Waiver.* If, before the expiration of the time prescribed in subsection (7) of this section for the mailing of a notice of deficiency determination, the taxpayer has consented in writing to the mailing of the notice after such time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

SEC. 12-416. *Assessment if no return made.* (1) *Assessment; failure to file return.* If any person fails to make a return, the commissioner shall make an estimate of the amount of the gross receipts of the person or, as the case may be, of the amount of the total sales price of tangible personal property sold or purchased by the person, the storage, use or other consumption of which in this state is subject to the use tax. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the commissioner's possession or may come into his possession. Upon the basis of this estimate the commissioner shall compute and determine the amount required to be paid to the state, adding to the sum thus arrived at a penalty equal to ten per cent thereof. One or more assessments may be made for one or for more than one period.

(2) *Offsets.* In making an assessment the commissioner may, in his discretion offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties and against the interest on the underpayments. The interest on

underpayments and overpayments shall be computed on the basis of one-half of one per cent per month or fraction thereof from the last day for the filing of the respective returns.

(3) *Interest.* The amount of the assessment, exclusive of penalties, shall bear interest at the rate of one-half of one per cent per month, or fraction thereof, from the last day of the month succeeding the quarterly period for which the amount or any portion thereof should have been returned until the date of payment.

(4) *Penalties.* If the failure of any person to file a return is due to fraud or an intent to evade this chapter or regulations, a penalty of twenty-five per cent of the amount required to be paid by the person, exclusive of penalties, shall be added thereto in addition to the ten per cent penalty provided in subsection (1) of this section.

(5) *Notice of assessment.* Promptly after making his assessment the commissioner shall give to the person written notice of the estimate, assessment and penalty, the notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency assessment.

SEC. 12-417. *Jeopardy assessments.* (1) *Jeopardy assessment.* If the commissioner believes that the collection of any tax or any amount of tax required to be collected and paid to the state or of any assessment will be jeopardized by delay, he shall thereupon make an assessment of the tax or amount of tax required to be collected, noting that fact upon the assessment. The amount assessed is immediately due and payable.

(2) *Interest and penalty.* If the amount specified in the assessment is not paid within ten days after service of notice thereof upon the person against whom the assessment is made, the amount becomes final at the expiration of the ten

days, unless a petition for reassessment is filed within the ten days, and the delinquency penalty and the interest provided in section 12-419 shall attach to the amount of the tax or the amount of the tax required to be collected.

(3) *Petition for reassessment; security.* The person against whom a jeopardy assessment is made may file a petition for the reassessment thereof, pursuant to section 12-418, with the commissioner within ten days after the service upon him of notice of the assessment. Such person shall also, within said ten-day period, deposit with the commissioner such security as the commissioner deems necessary to insure compliance with this chapter. The security may be sold by the commissioner in the manner prescribed by section 12-430.

Sec. 12-418. *Reassessments.* (1) *Petition for reassessment.* Any person against whom an assessment is made under section 12-415 or 12-416 or any person directly interested may petition for a reassessment within thirty days after service upon such person of notice thereof. If a petition for reassessment is not filed within the thirty-day period, the assessment becomes final at the expiration of the period.

(2) *Oral hearing.* If a petition for reassessment is filed within the thirty-day period, the commissioner shall reconsider the assessment and, if the person has so requested in his petition, shall, in his discretion, grant the person an oral hearing and shall give him ten days' notice of the time and place of the hearing. The commissioner may continue the hearing from time to time, as may be necessary, and may assign the conduct of such hearing to his representative.

(3) *Decrease or increase of assessment.* The commissioner may decrease or increase the amount of the assessment before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the commissioner at or before the hearing.

(4) *Finality date of order or decision.* The order or decision of the commissioner upon a petition for reassessment becomes final thirty days after service upon the petitioner of notice thereof.

(5) *Due date of assessment; penalty.* All assessments made by the commissioner under section 12-415 and 12-416 are due and payable at the time they become final. If they are not paid when due and payable, a penalty of ten per cent of the amount of the assessment, exclusive of interest and penalties, shall be added thereto.

(6) *Service of notice.* Any notice required by this section shall be served personally or by mail in the manner prescribed for service of notice of a deficiency assessment.

SEC. 12-419. *Interest and penalties.* Any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of assessments made by the commissioner under sections 12-415 and 12-416, within the time required shall pay a penalty of five per cent of the tax or amount of the tax during the first fifteen days that such amount remains due and unpaid, which penalty shall be increased to ten per cent thereafter, in addition to the tax or amount of the tax, plus interest at the rate of one half of one per cent per month, or fraction thereof, from the date on which the tax or the amount of tax required to be collected became due and payable to the state until the date of payment.

SEC. 12-420. *Collection of taxes. Delinquent taxes.* The amount of any tax, penalty or interest due and unpaid under the provisions of this chapter may be collected under the provisions of section 12-35. The warrant therein provided for shall be signed by the commissioner or his authorized agent. The amount of any such tax, penalty and interest shall be a lien, from the last filing day of any quarterly period for

which the taxpayer is delinquent until discharged by payment, against all real estate of the taxpayer within the state, and a certificate of such lien signed by the commissioner may be filed for record in the office of the clerk of any town in which such real estate is situated, provided no such lien shall be effective as against any bona fide purchaser or encumbrancer of any interest in any such property to whom such property is transferred between the last day of such quarterly period and the date on which such lien is recorded. When any tax with respect to which a lien has been recorded under the provisions of this section has been satisfied, the commissioner, upon request of any interested party, shall issue a certificate discharging such lien, which certificate shall be recorded in the same office in which the lien was recorded. Any action for the foreclosure of such lien shall be brought by the attorney general in the name of the state in the superior court for the county in which the property subject to such lien is situated, or, if such property is located in two or more counties, in the superior court for any one such county and the court may limit the time for redemption or order the sale of such property or pass such other or further decree as it judges equitable.

SEC. 12-421. *Hearing by commissioner.* Any taxpayer, having paid any tax as provided by this chapter, aggrieved by the action of the commissioner or his authorized agent in fixing the amount of such tax or in imposing any penalty hereunder, may apply to the commissioner, in writing, within thirty days after the notice of such action is delivered or mailed to him, for a hearing and a correction of the amount of the tax or penalty so fixed, setting forth the reasons why such hearing should be granted and the amount in which such tax should be reduced. The commissioner shall promptly consider each such application and may grant or deny the hearing requested. If the hearing is denied, the applicant shall be notified thereof forthwith; if it is granted, the commissioner shall notify the

applicant of the time and place fixed for such hearing. After such hearing the commissioner may make such order in the premises as appears to him just and lawful and shall furnish a copy of such order to the applicant. The commissioner may, by notice in writing at any time within three years after the date when any return of any taxpayer has been due, order a hearing on his own initiative and require the taxpayer or any other individual whom he believes to be in possession of relevant information concerning the taxpayer to appear before him or his authorized agent with any specified books of account, papers or other documents, for examination under oath.

SEC. 12-422. *Appeal.* Any taxpayer aggrieved because of any order, decision, determination or disallowance of the tax commissioner under section 12-418, 12-421 or 12-425 may, within one month after service upon the taxpayer of notice of such order, decision, determination or disallowance, take an appeal therefrom to the superior court for Hartford county, which shall be accompanied by a citation to the tax commissioner to appear before said court. Such citation shall be signed by the same authority and such appeal shall be returnable at the same time and served and returned in the same manner, as is required in case of a summons in a civil action. The authority issuing the citation shall take from the appellant a bond or recognizance to the state of Connecticut, with surety to prosecute the appeal to effect and comply with the orders and decrees of the court in the premises. Such appeals shall be preferred cases, to be heard, unless cause appears to the contrary, at the first session, by the court or by a committee appointed by it. Said court may grant such relief as may be equitable and, if such tax has been paid prior to the granting of such relief, may order the treasurer to pay the amount of such relief, with interest at the rate of six per cent per annum, to the aggrieved taxpayer. If the appeal has been taken without probable cause, the court may tax double or triple costs, as the case demands; and, upon all such appeals which are

denied, costs may be taxed against the appellant at the discretion of the court, but no costs shall be taxed against the state.

SEC. 12-423. *Abatement of taxes.* When any tax assessed under the provisions of this chapter has been found to be uncollectible, such tax and penalty or interest assessed in connection therewith may be abated upon the advice of the attorney general. Upon such approval the commissioner of finance and control shall certify such abatement to the comptroller and treasurer, and an itemized statement of all such abatements shall be included in the published report of the commissioner of finance and control.

SEC. 12-424. *Payments on termination of business and successor's liability.* (1) *Withholding by purchaser.* If any retailer liable for any amount under this chapter sells out his business or stock of goods or quits the business, his successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the commissioner showing that it has been paid or a certificate stating that no amount is due.

(2) *Liability of purchaser; release.* If the purchaser of a business or stock of goods fails to withhold the purchase price as required, he becomes personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within sixty days after receiving a written request from the purchaser for a certificate, the commissioner shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the commissioner of the amount that must be paid as a condition of issuing the certificate. Failure of the commissioner to mail the notice shall release the purchaser from any further obligation to withhold the purchase price as above provided. The time within which the obligation of the successor may be enforced shall start to run at the time the retailer sells out his business or stock of goods or at the time

that the assessment against the retailer becomes final, whichever event occurs later.

SEC. 12-425. *Overpayments and refunds.* (1) *Credits and refunds.* If the commissioner determines that any amount, penalty or interest has been paid more than once or has been erroneously or illegally collected or computed, the commissioner shall certify to the state treasurer the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid. If approved by the treasurer, the excess amount collected or paid shall be credited on any amounts then due and payable from the person under this chapter, and the balance shall be refunded, upon order of the comptroller, to the person or his successors, administrators or executors. Any overpayment of the use tax by a purchaser to a retailer who is required to collect the tax and who gives the purchaser a receipt therefor pursuant to this chapter shall be credited or refunded by the state to the purchaser.

(2) *Claim; limitation period.* No refund shall be allowed unless a claim therefor is filed with the commissioner within three years from the last day of the month succeeding the quarterly period for which the overpayment was made, or, with respect to assessments made under sections 12-415 and 12-416, within six months after the assessments become final, or within six months from the date of overpayment, whichever period expires later. No credit shall be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the commissioner within such period, or unless the credit relates to a period for which a waiver is given pursuant to subsection (8) of section 12-415.

(3) *Condition; sales tax reimbursment.* No credit or refund of any amount paid pursuant to section 12-411 shall be allowed on the ground that the storage, use or other consumption of the property is exempted under subsection (1) of sec-

tion 12-413, unless in addition to the overpayment for which the claim is filed the claimant also reimburses his vendor for the amount of the sales tax imposed upon his vendor with respect to the sale of the property and paid by the vendor to the state.

(4) *Form and content of claim.* Every claim shall be in writing and shall state the specific grounds upon which the claim is founded.

(5) *Effect of failure to file claim.* Failure to file a claim within the time prescribed in this section constitutes a waiver of any demand against the state on account of overpayment.

(6) *Notice of action on claim.* Within thirty days after disallowing any claim in whole or in part the commissioner shall serve notice of his action on the claimant in the manner prescribed for service of notice of a deficiency assessment.

SEC. 12-426. *Administration.* (1) *Enforcement by commissioner; regulations.* The commissioner shall enforce the provisions of this chapter and may adopt and enforce regulations relating to the administration and enforcement of this chapter. The commissioner may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

(2) *Employees and representatives of commissioner.* The commissioner may employ accountants, auditors, investigators, assistants and clerks necessary for the efficient administration of this chapter, in accordance with the provisions of chapter 63, and may designate representatives to conduct hearings or perform any other duties imposed by this chapter upon the commissioner.

(3) *Records.* Every seller, every retailer as defined in subdivision (b) of subsection (12) of section 12-407 and every

person storing, using or otherwise consuming in this state tangible personal property purchased from a retailer shall keep such records, receipts, invoices and other pertinent papers in such form as the commissioner requires.

(4) *Examination of records.* The commissioner or any person authorized by him may examine the books, papers, records and equipment of any person liable for the use tax, and may investigate the character of the business of the person in order to verify the accuracy of any return made or, if no return is made by the person, to ascertain and determine the amount required to be paid.

(5) *Reports relative to use tax liability.* In administration of the use tax the commissioner may require the filing of information reports by any person or class of persons having in his or their possession or custody information relating to sales of tangible personal property the storage, use or other consumption of which is subject to the tax. Such reports shall be filed when the commissioner requires and shall set forth the names and addresses of purchasers of the tangible personal property, the sales price of the property, the date of sale and such other information as the commissioner may require.

(6) *Divulging of information forbidden.* Neither the commissioner, his attorney or agent nor any other officer or employee engaged in the administration of this chapter shall make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any retailer or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person, except for purposes of photostating or microfilming;

provided the governor may, by general or special order, authorize examination of the returns by other state officers, by tax officers of another state, by the federal government, if a reciprocal arrangement exists or by any other person. Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest and penalties. Any person who violates any provision of this subsection shall be fined not more than one thousand dollars.

SEC. 12-427. *Disposition of proceeds; refunds.* (1) *Settlement with treasurer.* All funds received by the tax commissioner under the provisions of this chapter shall be recorded with the comptroller and shall be deposited daily with the state treasurer. The commissioner shall issue his receipt to any taxpayer for any payment upon request.

(2) *Refunds to be made from general fund.* For the purpose of making any refund provided for in this chapter, the comptroller, upon certification of the tax commissioner and with the approval of the finance advisory committee, is authorized to draw upon the unappropriated surplus of the general fund.

(3) *Publication and disclosure of information.* The tax commissioner shall publish in his report, required under the provisions of section 4-60, data showing the amount of taxes and the amount of penalties, assessed under the provisions of this chapter, with such classifications of taxpayers, incomes and deductions and such other facts as he deems pertinent and valuable. Such published figures shall not disclose the operations of any taxpayer in such manner as to permit the identification of such taxpayer by those unassociated with his business. The commissioner shall, at least annually, and oftener in his discretion, publish for distribution all regulations pre-

scribed hereunder and such rulings and information as appear to him to be of general interest.

SEC. 12-428. *Violations.* (1) *Criminal penalties.* Any retailer or other person who fails or refuses to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the commissioner, or who renders a false or fraudulent return, shall be fined not more than five hundred dollars or imprisoned not more than thirty days or both for each offense.

(2) *Fraudulent returns.* Any person required to make, render, sign or verify any report who makes any false or fraudulent return, with intent to defeat or evade the assessment of an amount due, required by law to be made, shall for each offense be fined not less than three hundred dollars and not more than five thousand dollars, or be imprisoned for not more than one year or be both fined and imprisoned.

(3) *Violation of law.* Any person who violates any provision of this chapter, for which no other penalty is provided, shall be fined not more than five hundred dollars or imprisoned not more than one year or both.

SEC. 12-429. *Oaths and subpoenas.* The commissioner and any agent of the commissioner authorized to conduct any inquiry, investigation or hearing hereunder may administer oaths and take testimony under oath relative to the matter of inquiry or investigaion. At any hearing ordered by the commissioner, the commissioner or his agent authorized to conduct such hearing and having authority by law to issue such process may subpoena witnesses and require the production of books, papers and documents pertinent to such inquiry. No witness under subpoena authorized to be issued by the provisions of this chapter shall be excused from testifying or from producing books or papers on the ground that such testimony or the production of such books or other documentary evi-

dence would tend to incriminate him, but such evidence or the books or papers so produced shall not be used in any criminal proceeding against him. If any person disobeys such process or, having appeared in obedience thereto, refuses to answer any pertinent question put to him by the commissioner or his authorized agent, or to produce any books and papers pursuant thereto, the commissioner or such agent may apply to the superior court for the county wherein the taxpayer resides or wherein the business has been conducted, or to any judge of said court if the same is not in session, setting forth such disobedience to process or refusal to answer, and said court or such judge shall cite such person to appear before said court or such judge to answer such question or to produce such books and papers and, upon refusal so to do, shall commit such person to jail until he testifies, but not for a longer period than sixty days. Notwithstanding the serving of the term of such commitment by any person the commissioner may proceed in all respects with such inquiry and examination as if the witness had not previously been called upon to testify. Officers who serve subpoenas issued by the commissioner or under his authority and witnesses attending hearing conducted by him hereunder shall receive fees and compensation at the same rates as officers and witnesses in the courts of this state, to be paid on vouchers of the commissioner on order of the comptroller from the appropriation for the administration of this chapter.

SEC. 12-430. *Miscellaneous provisions.* (1) *Security for tax.* The commissioner, whenever he deems it necessary to insure compliance with this chapter, may require any person subject thereto to deposit with him such security as the commmissioner determines. The amount of the security shall be fixed by the commissioner but shall not be greater than twice the person's estimated average liability for the period for which he files returns, determined in such manner as the commissioner deems proper, or ten thou-

sand dollars, whichever amount is the lesser. The amount of the security may be increased or decreased by the commissioner subject to the limitations herein provided. The commissioner may sell the security at public auction if it becomes necessary so to do in order to recover any tax or any amount required to be collected, or any interest or penalty due. Notice of the sale may be served upon the person who deposited the security personally or by mail. If by mail, service shall be made in the manner prescribed for service of a notice of a deficiency assessment and shall be addressed to the person at his address as it appears in the records of the commissioner's office. Security in the form of a bearer bond, issued by the United States or the state of Connecticut, which has a prevailing market price may, however, be sold by the commissioner at private sale at a price not lower than the prevailing market price thereof. Upon any sale any surplus above the amounts due shall be returned to the person who deposited the security.

(2) *Penalty for delinquent filing of return.* In addition to the other penalty provided for in section 12-428, a penalty of two dollars and fifty cents shall be imposed upon each person required by this chapter to file a return when the same is filed subsequent to the last day of filing for each quarterly or other period. The commissioner, in his discretion and for due cause shown, may waive such penalty.

(3) *Evidence of tax on motor vehicles.* Each person before obtaining an original or transferral registration for a motor vehicle in this state shall furnish evidence that any tax due thereon pursuant to the provisions of this chapter has been paid in accordance with regulations prescribed by the tax commissioner, and on forms approved by the tax commissioner and the motor vehicle commissioner. The motor vehicle commissioner shall, upon the request of the tax commissioner, after hearing by the tax commissioner, suspend or

revoke a motor vehicle registration of any person who fails to pay any tax due in connection with the sale, storage, use or other consumption of such motor vehicle pursuant to the provisions of this chapter.

(4) *Trade-in of motor vehicles or farm tractors.* Where a trade-in of a motor vehicle is received by a motor vehicle dealer, licensed under the provisions of subdivision (D) of part III of chapter 246 and holding a valid seller's permit, upon the sale of another motor vehicle to a consumer, or where a trade-in of a farm tractor is received by retailer of farm tractors holding a valid seller's permit, upon the sale of another farm tractor to a consumer, the tax is only on the difference between the sale price of the motor vehicle or farm tractor purchased and the amount allowed on the motor vehicle or farm tractor traded in on such purchase. When any such motor vehicle or farm tractor traded in is subsequently sold to a consumer or user, the tax provided for in this chapter applies.

(5) *Payment of sales or use tax to another state.* If any article of tangible personal property has already been subjected to a sales or use tax by any other state or political subdivision thereof and payment made thereon in respect to its sale or use in an amount less than the tax imposed by this chapter, the provisions of this chapter shall apply, but at a rate measured by the difference, only, between the rate herein fixed and the rate by which the previous tax upon the sale or use was computed. If such tax imposed in such other state or political subdivision thereof is equivalent to or in excess of the rate imposed under this chapter at the time of such sale or use, then no tax shall be due on such article.

SEC. 12-431. *Tax on casual sales of motor vehicles, boats and airplanes.* In case of the purchase of any motor vehicle, boat or airplane other than from a licensed motor vehicle dealer or a dealer or retailer of boats or airplanes, the receipts

therefrom shall not be included in the measure of the sales tax, but the purchaser thereof shall pay a use tax on the total purchase price thereof to the tax commissioner, as provided in section 12-411, in the case of tangible personal property purchased from a retailer and, in the case of motor vehicles, before obtaining an original or transferral registration in accordance with regulations prescribed by the tax commissioner and on forms approved by the tax commissioner and the commissioner of motor vehicles; provided no use tax shall be payable in cases of transfer or purchase (a) when the transferee or purchaser is the spouse, mother, father, brother, sister or child of the seller or (b) when a motor vehicle is transferred or sold in connection with the organization, reorganization, dissolution or partial liquidation of an incorporated or unincorporated business, provided (1) the last taxable sale, transfer or use of the vehicle was subjected to a tax imposed by this chapter, (2) the tranferee is the incorporated or unincorporated business or a stockholder, owner, member or partner thereof and (3) any gain or loss to the transferor is not recognized for federal income tax purposes under the provisions of the Internal Revenue Code and treasury regulations and rulings issued thereunder.

SEC. 12-432. *Use of proceeds.* All proceeds of the tax collected under the provisions of this chapter shall be allocated to and expended for public health, welfare and education purposes only.

SEC. 12-432a. *Civil actions on sales solicited by catalogs.* No retailer, as defined in subsection (12) (d) of section 12-407, who fails to comply with the provisions of chapter 219 of the general statutes, as herein amended, shall maintain any action in law or equity in this state on any sale or transaction included under said subsection (12) (d).

78TH CONGRESS
2d Session
SENATE
REPORT
No. 959

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT AMENDMENT

JUNE 12 (legislative day, MAY 9, 1944. — Ordered to be printed

MR. BRIDGES, from the Committee on Military Affairs, submitted the following

REPORT

[To accompany H. R. 4733]

The Committee on Military Affairs, to whom was referred the bill, H. R. 4733, to amend section 514 of the Soldiers' and Sailors' Civil Relief Act, having considered the same, submit the following report thereon, with the recommendation that it do pass.

The purpose of the proposed legislation is to clarify the intent of section 514 of the Soldiers' and Sailors' Civil Relief Act as added by section 17 of the act of October 6, 1942 (56 Stat. 769, 777). When that provision of law was added to the act to relieve persons in service from liability of double taxation by being moved from one State to another under orders, it was intended that it should apply to personal-property taxes as well as to income taxes. As presently constituted, it primarily affects taxes in respect to income and other taxes based on residence or domicile, but it does not prevent the State of "temporary residence" from taxing tangible personal property actually located in such State so long as the tax does not depend on residence or domicile. A few States have taken the position that tangible personal property of military

personnel who are only temporarily within their jurisdiction does not acquire a situs for taxation, but it has been held that section 514 of the act as now written does not affect the right of a State to assess personal-property taxes on property within its jurisdiction. The result has been that servicemen find themselves at time subjected to personal-property taxes on the same property in more than one State during the same calendar year by reason of being moved under orders.

Your committee considers that the existing law pertaining to State taxation of the personal property of persons in military service present in the various States in compliance with military orders should be clarified; that the military personnel concerned should not be subjected to multiple taxation of personal property by the various States and should be given the same protection as to personal property taxes as is now provided in respect of income taxes.

Letter of the War Department follows:

WAR DEPARTMENT,
Washington, June 9, 1944.

HON. ROBERT R. REYNOLDS,
Chairman, Committee on Military Affairs,
United States Senate.

DEAR SENATOR REYNOLDS: The War Department has no objection to the enactment of H. R. 4733, Seventy-eighth Congress, an act to amend section 514 of the Soldiers' and Sailors' Relief Act.

The purpose of the proposed legislation is to prevent the multiple taxation of the personal property of military personnel by the various States, which it is understood was one of the purposes of section 514 of the Soldiers' and Sailors' Civil

Relief Act as added by the act of October 6, 1942 (56) Stat. 769, 777).

As presently worded, section 514 of the act primarily affects taxes in respect of income and other taxes based on residence or domicile. Nothing in that section prevents the State of "temporary residence" from taxing tangible personal property actually located in such State, so long as the tax does not depend on residence or domicile. A few States, however, have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdictions does not acquire a situs for taxation.

The proposed legislation will not result in any additional cost to the Government.

The Bureau of the Budget advised with respect to a similar report on H. R. 4733 to the Committee on Military Affairs, House of Representatives, that there was no objection to its submission to the Congress.

Sincerely yours,

Secretary of War.
HENRY L. STIMSON,

The report of the House Military Affairs Committee (Rept. No. 1514) is appended hereto and made a part of this report.

[H. Rept. No. 1514, 78th Cong., 2d sess.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 4733) to amend section 514 of the Soldiers' and Sailors' Relief Act, having considered the same, submit the following report thereon, with the recommendation that it do pass with the following amendment:

Strike out all after the enacting clause and insert the following language:

"SEC. 514. (1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, political subdivision, or District: *Provided*, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942."

"(2) When used in this section, (a) the term 'personal

property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect of motor vehicles or the use thereof, provided that the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.

"SEC. 2. Nothing contained in this Act shall be construed to require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees, or excises imposed in respect of motor vehicles or the use thereof) paid prior to the date of its enactment."

GENERAL COMMENT

When the Soldiers' and Sailors' Civil Relief Act of 1940 was amended by the act of October 6, 1942, a provision was written into the act to relieve persons in the service from liability of double taxation by being moved from one State to another under orders. It was intended that this should apply to personal property taxes as well as income taxes. However, it has been held that under the wording of such amendment personal property taxes were not included. The result has been that servicemen find themselves at times subjected to personal property taxes in more than one State by reason of being moved under orders.

The purpose of the present act is to correct this situation and to give to the servicemen the same protection as to personal property taxes that they now have as to income taxes.

CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, there follows the provisions of existing law and the changes proposed:

EXISTING LAW

SEC. 514. For the purposes of taxation in respect of any person, or of his property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while and solely by reason of being, so absent. For the purposes of taxation in respect of the income or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to the date of the enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942.

PROPOSED

SEC. 514. (1) The income, gross receipts, and personal property, tangible or intangible (including automotive vehicles), of any person in the military service shall not be subject to taxation by any State, Territory, possession, political subdivision thereof, or the District of Columbia, by reason of (a) his temporary residence, (b) receipt of income or gross recepits, or (c) the temporary location of personal property, within a State, Territory, possession, political subdivision

thereof, or the District of Columbia: *Provided,* That nothing contained in this section shall prevent the State, Territory, possession, political subdivision thereof, or the District of Columbia, wherein a person in the military service resided or was domiciled prior to the time when he first acquired a temporary residence, as defined herein, from imposing a tax upon the income, gross receipts, or personal property of such persons, if it otherwise has jurisdiction to impose such tax: *And provided further,* That nothing contained in this section shall prevent a State, Territory, possession, political subdivision thereof, or the District of Columbia from imposing taxes upon income or gross receipts, other than compensation for military service, derived from sources therein, nor from imposing a tax on personal property situated therein other than at a temporary location, as herein defined.

S. Repts., 78-2. vol 4——47

PROPOSED

(2) After the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, no State, Territory, possession, political subdivision thereof, or the District of Columbia shall make claim for, collect, or receive from any person in the military service any tax made inapplicable by subsection (1) hereof and which has accrued subsequent to the declaration of the national emergency made by the President on September 8, 1939; but the refund of taxes collected or received prior to such effective date shall not be required by the provisions of this section.

(3) This section shall not be deemed in any manner to authorize any State, Territory, possession, political subdivision thereof, or the District of Columbia to impose any tax upon personal property located in or on any Federal area.

(4) (a) When after September 8, 1939, a person in the

military service has changed his physical residence in order to comply with military orders he shall be deemed to have acquired a "temporary residence"; except that for purposes of taxation by a State, Territory, possession, or the District of Columbia he shall be deemed to have acquired a "temporary residence" only if he shall have moved outside the exterior boundaries of such State, Territory, possession, or the District of Columbia.

(b) Personal property shall be deemed to have a "temporary location" when a person in the military service has such property at his "temporary residence" or when, on changing from one "temporary residence" to another, he leaves it at a previous "temporary residence."

(c) The term "Federal area" means any lands or premises owned or acquired by or for the use of the United States or any department, establishment, or agency of the United States.

The amendment proposed by the committee as compared to existing law is as follows (matter in which no change is proposed is shown in roman; matter proposed to be omitted is shown in black brackets; new matter is prinited in italics):

"SEC. 514. (1) For the purposes of taxation in respect of any person, or of his *personal* property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while,

and solely by reason of being, so absent. For the purposes of taxation in respect of the *personal property*, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and *personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, political subdivision, or District: Provided, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction.* This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to [the date of the enactment of the Soldiers' and Sailors' Civil Relief Act amendment of 1942."] *October 6, 1942.*

"(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect of motor vehicles or the use thereof, provided that the license, fee or excise required by the State, Territory, possession or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

SEC. 2. *Nothing contained in this Act shall be construed to require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees or excises imposed in respect of motor vehicles or the use thereof) paid prior to the date of its enactment.*

78TH CONGRESS
2d Session

REPORT
No. 1514

HOUSE OF REPRESENTATIVES

AMENDING SECTION 514 OF THE SOLDIERS' AND SAILORS' RELIEF ACT

MAY 25, 1944. — Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

MR. SPARKMAN, from the Committee on Military Affairs, submitted the following

REPORT

[To accompany H. R. 4733]

The Committee on Military Affairs, to whom was referred the bill (H. R. 4733) to amend section 514 of the Soldiers' and Sailors' Relief Act, having considered the same, submit the following report the eon, with the recommendation that it do pass with the following amendment:

Strike out all after the enacting clause and insert the following language:

SEC. 514. (1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or

domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, political subdivision, or District: *Provided*, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

(2) When used in this section, (a) the term "personal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect of motor vehicles or the use thereof, provided that the license, fee or excise required by the State, Territory, possession or District of Columbia of which the person is a resident or in which he is domiciled has been paid.

SEC. 2. Nothing contained in this Act shall be construed to require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees or excises imposed in respect of motor vehicles or the use thereof) paid prior to the date of its enactment.

General Comment

When the Soldiers' and Sailors' Civil Relief Act of 1940 was amended by the act of October 6, 1942, a provision was written into the act to relieve persons in the service from liability of double taxation by being moved from one State to another under orders. It was intended that this should apply to personal property taxes as well as income taxes. However, it has been held that under the wording of such amendment personal property taxes were not included. The result has been that servicemen find themselves at times subjected to personal property taxes in more than one State by reason of being moved under orders.

The purpose of the present act is to correct this situation and to give to the servicemen the same protection as to personal property taxes that they now have as income taxes.

Changes in Existing Law

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, there follows the provisions of existing law and the changes proposed:

Existing Law

Sec. 514. For the purposes of taxation in respect of any person, or of his property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the

foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the income or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District. This section shall be effective as of September 8, 1939, except that its shall not require the crediting or refunding of any tax paid prior to the date of the enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942.

PROPOSED

SEC. 514. (1) The income, gross receipts, and personal property, tangible or intangible (including automotive vehicles), of any person in the military service shall not be subject to taxation by any State, Territory, possession, political subdivision thereof, or the District of Columbia, by reason of (a) his temporary residence, (b) receipt of income or gross receipts, or (c) the temporary location of personal property, within a State, Territory, possession, political subdivision thereof, or the District of Columbia: *Provided*, That nothing contained in this section shall prevent the State, Territory, possession, political subdivision thereof, or the District of Columbia, wherein a person in the military service resided or was domiciled prior to the time when he first acquired a temporary residence, as defined herein, from imposing a tax upon the income, gross receipts, or personal property of such persons, if it otherwise has jurisdiction to impose such tax: *And provided further*, That nothing contained in this section shall prevent a State, Territory, possession, political subdivision thereof, or the District of Columbia from imposing taxes upon income or gross receipts, other than compensation for

military service, derived from sources therein, nor from imposing a tax on personal property situated therein other than at a temporary location, as herein defined.

(2) After the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, no State, Territory, possession, political subdivision thereof, or the District of Columbia shall make claim for, collect, or receive from any person in the military service any tax made inapplicable by subsection (1) hereof and which has accrued subsequent to the declaration of the national emergency made by the President on September 8, 1939; but the refund of taxes collected or received prior to such effective date shall not be required by the provisions of this section.

(3) This section shall not be deemed in any manner to authorize any State, Territory, possession, political subdivision thereof, or the District of Columbia to impose any tax upon personal property located in or on any Federal area.

(4) (a) When after September 8, 1939, a person in the military service has changed his physical residence in order to comply with military orders he shall be deemed to have acquired a "temporary residence"; except that for purposes of taxation by a State, Territory, possession, or the District of Columbia he shall be deemed to have acquired a "temporary residence" only if he shall have moved outside the exterior boundaries of such State, Territory, possession, or the District of Columbia.

(b) Personal property shall be deemed to have a "temporary location" when a person in the military service has such property at his "temporary residence" or when, on changing from one "temporary residence" to another, he leaves it at a previous "temporary residence."

(c) The term "Federal area" means any lands or prem-

ises owned or acquired by or for the use of the United States or any department, establishment, or agency of the United States.

The amendment proposed by the committee as compared to existing law is as follows (matter in which no change is proposed is shown in roman; matter proposed to be omitted is shown in black brackets; new matter is printed in italics):

"SEC. 514. (1) For the purposes of taxation in respect of any person, or of his *personal* property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being so absent. For the purposes of taxation in respect of the *personal property*, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, *and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, political subdivision, or District: Provided, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in*

or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to [the date of the enactment of the Soldiers' and Sailors' Civil Relief Act amendment of 1942."] October 6, 1942.—

"(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect of motor vehicles or the use thereof, provided that the license, fee or excise required by the State, Territory, possession or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

SEC. 2. Nothing contained in this Act shall be construed to require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees or excises imposed in respect of motor vehicles or the use thereof) paid prior to the date of its enactment.

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NO. 610

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

JOHN L. SULLIVAN, TAX COMMISSIONER
OF THE STATE OF CONNECTICUT, ET AL.
Defendants-Appellants

VS.

UNITED STATES OF AMERICA
AND
LIEUTENANT STANLEY D. SCHUMAN, U.S.N., ET AL.
Plaintiffs-Appellees

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

AMICI CURIAE BRIEF IN SUPPORT OF JURISDICTIONAL STATEMENT OF DEFENDANTS-APPELLANTS

STATE OF TEXAS
CRAWFORD C. MARTIN
Attorney General of Texas
A. J. CARUBBI, JR.
Executive Assistant Attorney General
KERNS B. TAYLOR
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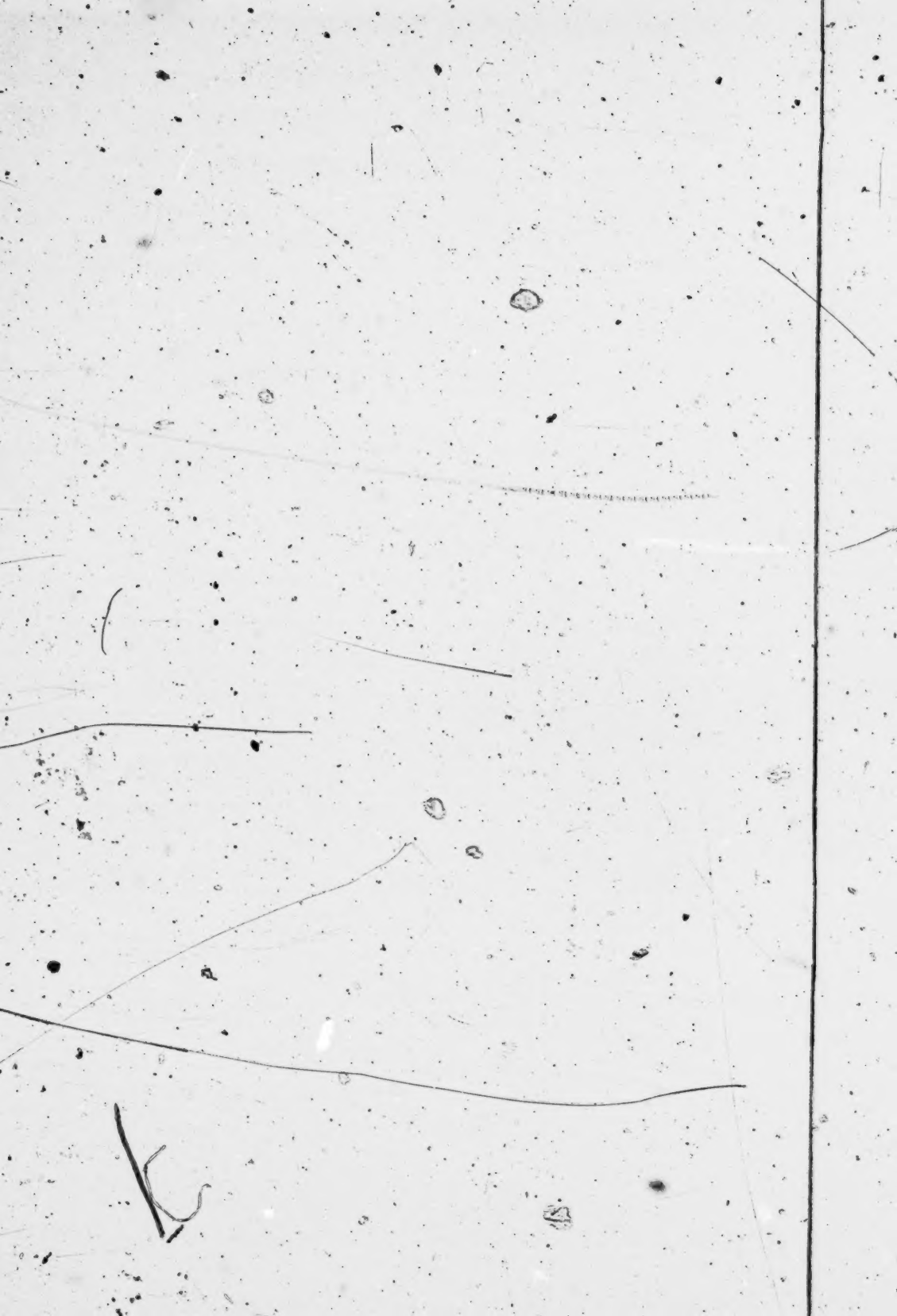

SUBJECT INDEX

	Page
Interest of Amici Curiae	1
Argument	2
Conclusion	8
Proof of Service	12

CITATIONS

California v. Buzard, 382 U.S. 386 (1966)	4
Dameron v. Broadhead, 345 U.S. 322 (1953)	4
Dept. of Treasury v. Wood Preserving Co., 313 U.S. 62 (1941)	7
Ford Motor Co. v. Beauchamp, 308 U.S. 331 (1939)	7
International Harvester Co. v. Dept. of Treasury, 322 U.S. 340 (1940)	7
McGoldrick v. Berwind-White Coal Mining Co., 309 U.S. 33 (1940)	5, 7
McGoldrick v. Felt & Tarrant Mfg. Co., 309 U.S. 70 (1940)	7
Pacific Sales Pipeline Co. v. Utah, 372 U.S. 605 (1963)	7

Texts

51 A.Jur. 526-528, Taxation, Sec. 524	5
84 C.J.S. 411, Taxation, Sec. 215	5
84 C.J.S. 431-435, Taxation, Sec. 225	5
84 C.J.S. 437-443, Taxation, Sec. 227	5

Statutes

50 U.S.C. App. Sec. 574, Section 514	2-8

NO. .....

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

JOHN L. SULLIVAN, TAX COMMISSIONER
OF THE STATE OF CONNECTICUT, ET AL.
Defendants-Appellants

VS.

UNITED STATES OF AMERICA
AND
LIEUTENANT STANLEY D. SCHUMAN, U.S.N., ET AL.
Plaintiffs-Appellees

ON APPEAL FROM
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

AMICI CURIAE BRIEF IN SUPPORT OF JURISDICTIONAL STATEMENT OF DEFENDANTS-APPELLANTS

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

INTEREST OF AMICI CURIAE

This appeal involves a case of first impression, wherein the courts below declared that collection of Connecticut's sales taxes from non-resident servicemen present in the State solely pursuant to military orders contravened Section 514 of the Soldiers' and Sailors' Relief Act, 50 U.S.C. App. § 574, because under that Act Congress intended to exempt those servicemen from the payment of such taxes.

This brief of amici curiae is filed pursuant to Rule 42(4) of the United States Supreme Court and is pre-

sented for the State of Texas, sponsored by its Attorney General, and for the eighteen other undersigned States, sponsored by their Attorneys General, as shown below, and in which brief all have joined together and appear as amici of the Court. All of the undersigned states have sales and use taxes substantially similar to those of the State of Connecticut[1] and their interests are seriously affected by the decision of the appellate court below in this case. They would further show that such decision affects in all more than forty states and the District of Columbia, which have sales and use taxes; that Congress did not intend by the cited Soldiers' and Sailors' Relief Act to grant a tax exemption to such non-resident servicemen from these taxes, the exemption from which will cause immense and insoluble administrative burdens to the tax administrations and impair the revenues of the many states affected thereby to an incalculable extent. There are some two million servicemen presently serving within the various states in the United States, and in Texas alone there are at present approximately 206,377 servicemen, with a payroll of about $860,398,667.00, according to the 1968 Texas Almanac, indicating a substantial source of sales tax transactions. The legal questions presented are likewise so substantial that in the opinion of the undersigned plenary consideration by this Court is required.

ARGUMENT

The controlling issue involved in this case is whether Congress, by virtue of Section 514(1) of the Soldiers' and Sailors' Civil Relief Act (50 U.S.C. App. § 574), has denied to the states the power to levy a tax on the sale or purchase of tangible personal property within

[1]Except Michigan, which has a vendor type tax, the economic burden of which may be passed on to the vendee.

the state by non-resident servicemen. The Court of Appeals for the Second Circuit held that the state tax on the sale and purchase of tangible personal property within the State was a tax "with respect to personal property, or the use thereof" within the purview of Section 514(1). The Court further concluded that the spirit of the Soldiers' and Sailors' Civil Relief Act was to prevent the host state from imposing a tax on a non-resident serviceman inasmuch as it "improperly places the burden of supporting Connecticut upon their shoulders." That broad interpretation given Section 514(1) by the Court would indicate that any tax, even though the incidence falls upon a resident businessman, would fall within the immunity provided by Section 514(1) if it were subsequently passed on to the non-resident serviceman in connection with the purchase or sale of tangible personal property. Thus construed, cigarette taxes, gasoline taxes, and taxes on coin-operated machines, all of which have been historically excluded from the Soldiers' and Sailors' Civil Relief Act, are now brought into question. Secondly, inasmuch as most taxes based upon the sale or purchase of tangible personal property are computed by a percentage of the receipts of the seller (whether designated as retailer's occupation taxes, privilege taxes, transaction taxes or consumer's taxes) the interpretation placed on Section 514(1) of the Act creates an unreasonable burden upon the retailer inasmuch as he has a virtually impossible task of determining which servicemen are residents and which are non-residents and thus entitled to the immunity. Further, the Court of Appeals erroneously concluded that because a particular tax may be included within Section 514(1) that immunity from taxation would naturally follow, i.e., ("Section 514(1) eliminates jurisdictional grounds that otherwise could support taxation by the host state.") Merely placing

the situs of the use of the property to be outside of the host State does not necessarily preclude the levy of the tax on the purchase or sale of that property within the host state. Thus, this case should be reviewed to prevent uncertainty as to the standards to be applied to determine what type of tax is included within Section 514(1) and to remove the uncertainty as to whether including a particular tax within Section 514(1) creates an immunity and to avoid, if possible, the chaotic situation which arises as a result of the retailer being unable to determine to whom a tax immunity would apply.

Although Section 514 is read "with an eye friendly to those who dropped their affairs to answer their country's call," nevertheless any act infringing upon the state's authority to exact a contribution from those (residents or non-residents) to whom it extends its protection must be strictly construed. Consequently, for those transactions which clearly fall within the purview of Section 514 a liberal construction must follow. However, to determine whether or not a certain transaction was intended to be covered by the Act, a strict construction is required. For instance, the cases of *Dameron v. Broadhead,* 345 U.S. 322 (1953), involving a property tax, and *California v. Buzard,* 382 U.S. 386 (1966) involving the registration of a motor vehicle, were clearly areas covered by Section 514, which concern a judicial determination only of the nature and extent of the admitted immunity. The Court correctly gave a liberal interpretation favorable to the servicemen to the statutory scheme. However, in the present case the issue is whether Section 514 was designed to include within its immunization a tax unrelated to property taxes or motor vehicle registration but related only to the purchase or sale of tangible

personal property. Thus, to determine whether sales taxes are within the immunity provided by Section 514, a strict construction of the purported immunity is required, since the Court cannot assume without *specific language* that Congress intended to limit the state's authority to tax any transaction. A tax exemption is freedom from the burden of enforced contribution to governmental expense and maintenance and presupposes a liability, being applied only to a grant of immunity to persons or property which otherwise would have been liable to the taxation. 84 C.J.S. 411, Taxation, Sec. 215. Where the statute purports to grant an exemption from taxation, the universal rule of construction in that the particular provisions for exemption must be construed strictly against the party asserting the exemption in the absence of expressed legislative intent that the exemption is to be otherwise construed. The exemption must be clearly defined and founded upon plain language, without doubt or ambiguity. Whenever any such doubt arises, it is to be resolved against the exemption, as exemptions from taxation are not favored. 51 Am. Jur. 526-528, Taxation, Sec. 524; 84 C.J.S. 437-443, Taxation, Sec. 227; pp. 431-435, Sec. 225; citing numerous decisions of the United States Supreme Court as well as the other federal and state cases.

> "Courts are called upon to reconcile competing constitutional demands . . . that the power to lay taxes for support of state government shall not be unduly curtailed." See *McGoldrick v. Berwind-White Coal Mining Co.*, 309 U.S. 33.

We sincerely submit that a proper and careful reading of Section 514 reveals that all that it does is to treat the non-resident serviceman as remaining in his home state for purposes of taxation. It provides no

exemptions or immunities from taxation for the serviceman other than whatever benefits may follow as a result of being deemed to have never left his home state for the purposes of taxation. Except for determining the Congressional intent behind the term "licenses, fees or excises" as applied to motor vehicle registration, the criteria for determining whether transaction falls within Section 514 is not to determine, as the Court suggested, whether the tax requires the serviceman to contribute to the general revenue of the host state, but rather whether the tax would be lawful had the serviceman not left home but engaged in the transaction as a private citizen. For instance, had the serviceman not dropped his affairs and answered his country's call, he would have never left home and he would have not (1) brought personal property into the host State; or (2) used property within the host state; or (3) earned income within the host state; or (4) registered a vehicle within the host state—all areas of immunity within Section 514. Section 514, therefore, is designed to withhold from or deny to the host state the authority to tax a serviceman only in those instances where they would have no authority to tax had he not been on military orders. Consequently, the true judicial test to be applied to determine whether a specific tax is within the purview of Section 514 is to determine whether the tax would have been valid had it been applied to a private citizen who had maintained his residence and used his property only in his home state. In the area of taxes on sales or purchases of tangible personal property, had the purchaser, even though remaining a private citizen residing only in his home state, purchased tangible personal property in the host state (through mail order or by physically coming into the state), he would clearl have been required to pay the sales tax to the state in which

the property was purchased. Thus the authority of a state to levy taxes on sales or purchases is *not* dependent upon the criterion referred to in Section 514, i.e., the residence of the purchaser or the situs of the use and consumption of the property sold. The authority to exact such tax is dependent solely upon the authority to tax a transaction consummated within the state's borders regardless of the location of the purchaser or the location of the place at which the property is used. The Court has traditionally upheld the application of the similar taxes on sales even though the purchase and the only use of the property occur outside of the State: *International Harvester Co. v. Dept. of Treasury,* 322 U.S. 340 (1940); *Dept. of Treasury v. Wood Preserving Co.,* 313 U.S. 62 (1941); *McGoldrick v. Felt & Tarrant Mfg. Co.,* 309 U.S. 70 (1940), all of which involved a sales tax on purchases by out-of-state residents accepting delivery within the state; *McGoldrick v. Berwind-White Coal Mining Co.,* 309 U.S. 33 (1940), involving a sales tax on an interstate shipment to the state in which the sale occurred; *Pacific States Pipeline Co. v. Utah,* 372 U.S. 605 (1963), involving a sales tax on an interstate shipment from the taxing state; *Ford Motor Co. v. Beauchamp,* 308 U.S. 331 (1939), involving a tax on capital located out-of-state but used to produce business within the state.

The conclusion is inescapable that the immunity contained in Section 514 of the Soldiers' and Sailors' Civil Relief Act is based solely upon the servicemen's residence and the situs of his personal property and should be restricted to those taxes whose incidence are dependent upon the same criteria. A sales or use tax whose incidence is dependent upon the location of the sales transaction rather than the residence of the purchaser or the situs of the use of the property is clearly

not included within the statutory scheme. Should the term "taxation" include sales and use taxes, the application of Section 514 would not result in an immunity inasmuch as the transaction being taxed, i.e., the sale or purchase of tangible personal property, occurred within the borders of the state even though the purchaser remained at all times outside of the state and the property sold was used solely outside the state.

CONCLUSION

For the proper administration of justice and in the interest of the undersigned States whose rights are vitally affected by the ultimate decision of this Court, this Court should grant a writ of certiorari to the Defendants-Appellants in this case and correctly and finally dispose of the important issues presented to this Court.

Respectfully submitted,

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I, Kerns B. Taylor, one of the attorneys for Crawford C. Martin, Attorney General of the State of Texas, as one of the amici curiae herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ____ day of September, 1968, I served copies of the foregoing "Amici Curiae Brief in Support of Jurisdictional Statement of Defendants-Appellants" on the several parties thereto, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to each of the following attorneys of record in this cause:

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Plaintiffs-Appellees

KERNS B. TAYLOR

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 610

JOHN L. SULLIVAN, TAX COMMISSIONER OF THE STATE OF CONNECTICUT, ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

The United States believes that this Court has jurisdiction of this appeal, and that the question is a substantial one which this Court should review.

The courts below have held that the provisions of Connecticut statutes imposing sales and use taxes are invalid as applied to nonresident servicemen because of the provisions of Section 514 of the Soldiers' and Sailors' Relief Act of 1940, as amended, 50 U.S.C. App. 574. The jurisdiction of this Court on appeal is properly invoked under 28 U.S.C. 1254(2). *City of Detroit* v. *Murray Corp.*, 355 U.S. 489, 491-492.

STATEMENT

The United States instituted this action in the District Court for the District of Connecticut. Its suit was based upon its interest, as sovereign, in maintaining the protections which Congress has provided for members of the armed forces through Section 514. *United States* v. *Arlington County, Commonwealth of Virginia*, 326 F. 2d 929, 931-932 (C.A. 4). Lieutenant Stanley D. Schuman joined in the action as a plaintiff on his own behalf and as a representative of the class of members of the armed forces on active military service and not resident or domiciled in the State of Connecticut. The district court's dismissal of Lieutenant Schuman's claim for lack of jurisdiction was not appealed (J.S. 2A, fn. 1, 27A-29A). By agreement, appellants continue to collect the taxes pending appeal, with provision for refund if the judgment of the district court is ultimately sustained (J.S. 2).

The taxes in question are those imposed on the purchase or use for nonbusiness purposes of personal property in Connecticut. The applications of the tax are illustrated by several examples set forth at trial. Lieutenant Stanley D. Schuman of Nebraska and Commander Kent J. Carroll of Michigan both purchased used motor boats in Connecticut from nondealers. Schuman paid the use tax under protest; Carroll refused to pay. Commander Clyde H. Shaffer of Pennsylvania purchased a new car from a Connecticut dealer who collected the sales tax. Commander Jerome W. Roloff of Wisconsin bought a used car in Florida, and paid a sales tax there. When he

subsequently registered the car in Connecticut, he was required to pay the difference between the Florida sales tax and the Connecticut use tax. Finally, Commander William L. Foster purchased a new car from a Connecticut dealer and at the same time registered it in Texas, his home state, paying a Texas sales tax. Nevertheless, the dealer collected a full Connecticut tax. (J.S. 3A.)

DISCUSSION

The decision below, if sustained, would have wide effect throughout the United States, since nearly every State now has sales and use taxes. Although the examples utilized at the trial involved relatively large amounts of tax, incurred in connection with the purchase of boats and automobiles, no reason is seen why the decisions below would not be applicable to all sales and use taxes imposed on servicemen in stores open to civilians. The problems thus raised are considerable, and worthy of review by this Court.

Respectfully submitted.

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Solicitor General.

DECEMBER 1968.

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SUPREME COURT, U. S.

FEB 12 1969

JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 610

JOHN J. SULLIVAN, Tax Commissioner of the State of Connecticut, GERALD A. LAMB, Treasurer of the State of Connecticut; LOUIS I. GLADSTONE, Comptroller of the State of Connecticut; and ROBERT K. KILLIAN, Attorney General of the State of Connecticut,

Appellants,

vs.

UNITED STATES OF AMERICA and LIEUTENANT STANLEY D. SCHUMAN, U.S.N., a member of the armed forces of the United States on active military service not a resident of or domiciled in the State of Connecticut, suing on behalf of himself and all servicemen or former servicemen similarly situated and affected,

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On Appeal from the United States Court of Appeals
For the Second Circuit

Brief of the States of California and Illinois, Amici Curiae, in Support of Appellants

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SUBJECT INDEX

	Page
Interest of Amici Curiae	1
Argument	3
I. The Soldiers' and Sailors' Civil Relief Act Was Not Intended to Affect the Right of the States to Impose Non-Discriminatory Sales and Use Taxes with Respect to Tranactions to Which a Non-Resident Serviceman Is a Party	3
II. There Are Additional Reasons Why the Civil Relief Act Is Inapplicable if the Legal Incidence of a State Sales Tax Is on the Retailer	9
Conclusion	14

TABLE OF AUTHORITIES CITED

Cases	Pages
Avco Manufacturing Corp. v. Connelly, 145 Conn. 161, 140 Atl. 2d 479 (1958)	10
Clary v. Basalt Rock Co., 99 Cal. App. 2d 458, 222 P.2d 24 (1950)	11
Dameron v. Brodhead, 345 U.S. 322 (1953)	3, 4, 7, 12
DeAryan v. Akers, 12 Cal. 2d 781, 87 P.2d 847 (1939), cert. den. 308 U.S. 581 (1939)	11
First Agricultural Bank v. Tax Commission, 392 U.S. 339 (1968)	9, 10
Graham Bros., Inc. v. Los Angeles, 6 Cal. App. 2d 203, 44 P.2d 451 (1935)	11
Livingston Rock & Gravel Co. v. DeSalvo, 136 Cal. App. 2d 156, 288 P.2d 317 (1955)	11
McLeod v. Dilworth Co., 322 U.S. 327 (1944)	13
Meyer Construction Co. v. Korbett, 7 Fed. Supp. 616 (D. Calif. 1934)	11
Pac. Coast Eng. Co. v. State of California, 111 Cal. App. 2d 31, 244 P.2d 21 (1952)	11
Pacific Co. v. Johnson, 285 U. S. 480 (1932)	12
Roth Drug Inc. v. Johnson, 13 Cal. App. 2d 720, 57 P.2d 1022 (1936)	11
U. S. v. City of Detroit, 355 U. S. 466 (1957)	12
U.S. v. Sullivan, 398 F.2d 672	9
Western Litho. Co. v. State Board of Equalization, 11 Cal. 2d 156, 78 P.2d 731 (1938)	11

STATUTES

	Pages
Calif. Rev. & Tax. Code:	
§ 6051	10
§§ 6052, 6053	10
Comm. Gen. Stats., Ch. 219, Sec. 12-408/27	10
Soldiers' and Sailors' Civil Relief Act 54 Stat. 1186, 56 Stat. 777, 50 U.S.C. App. 574, cited throughout. § 514	3, 4, 6
61 Stat. 641, 4 U.S.C.A. § 105	5
76 Stat. 768	4

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U.S. Code, Cong. and Admin. News, 87th Congress, Second Session, 1962, p. 2841	5, 6

In the Supreme Court of the United States

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No. 610

JOHN J. SULLIVAN, Tax Commissioner of the State of Connecticut, GERALD A. LAMB, Treasurer of the State of Connecticut; LOUIS I. GLADSTONE, Comptroller of the State of Connecticut; and ROBERT K. KILLIAN, Attorney General of the State of Connecticut,

Appellants,

vs.

UNITED STATES OF AMERICA and LIEUTENANT STANLEY D. SCHUMAN, U.S.N., a member of the armed forces of the United States on active military service not a resident of or domiciled in the State of Connecticut, suing on behalf of himself and all servicemen or former servicemen similarly situated and affected,

Appellees.

On Appeal from the United States Court of Appeals
For the Second Circuit

Brief of the States of California and Illinois, Amici Curiae, in Support of Appellants

INTEREST OF AMICI CURIAE

This brief of *amici curiae* is presented for the State of California sponsored by its Attorney General. The State of California imposes a sales and use tax which is administered by the California State Board of Equalization. In addition, the State Board of Equalization admin-

isters local sales and use taxes for the various counties and cities of the State of California. There are approximately 345,000 servicemen stationed in the State of California of whom over 300,000 were not California residents or domiciliaries at the time they entered military service. California State and local sales taxes paid by these servicemen from other states amount to approximately $3,000,000 annually. There is also an undeterminable number of servicemen stationed in neighboring states who periodically come to California while on leave or pass.[1]

The applicability of the California use tax will be directly affected by the outcome of this case, as it is substantially identical to the Connecticut use tax. Moreover, although the legal incidence of the California sales tax differs from that of the Connecticut sales tax, the opinion of the Court of Appeals in this case apparently, though perhaps unintentionally, obliterates the significance of a distinction based on legal incidence.

The State of Illinois sponsored by its Attorney General joins in this *amici curiae* brief on the basis of the following considerations:

1. There are many thousands of servicemen in Illinois who were not Illinois domiciliaries or residents at the time they entered the service.

2. The applicability of the Illinois use tax will be directly affected by the outcome of this case as it is substantially identical to the Connecticut use tax.

3. The legal incidence of the Retailers' Occupation Tax is, like the California sales tax, solely on the retailer and is not on the purchaser.

---

1. The holding by the Court of Appeals necessarily requires every retailer to inquire of every serviceman-purchaser whether he is stationed in the state, in the state on leave, or if he is domiciled there. If he is in either of the latter two categories, he would have to pay tax as he is not there "solely" by reason of orders.

Accordingly, our purpose for filing this *amici curiae* brief is twofold: (1) to directly support the State of Connecticut in its contention that section 514 of the Soldiers' and Sailors' Civil Relief Act 54 Stat. 1186, 56 Stat. 777, 50 U.S.C. App. 574 (hereinafter sometimes referred to as the "Civil Relief Act") does not preclude the application of the Connecticut sales and use tax to servicemen. In conformity with rule 42(3) we will limit our presentation in this regard to those facets of the argument which, on the basis of an examination of the brief of Connecticut in the Court of Appeals, will not be covered by Connecticut. (2) In the event that this Court should decide adversely to Connecticut, this *amici curiae* brief will make clear that the different legal incidence of the California type sales tax and the Illinois Retailers' Occupation Tax excludes such taxes entirely from the scope and purpose of the Civil Relief Act. Although brief mention is made by Connecticut in its jurisdictional statement of other types of taxes whose legal incidence is on the retailer or vendor, e.g. taxes on cigarettes and gasoline, it seems evident therefrom and from the brief filed by Connecticut in the Court of Appeals that this matter will not be adequately covered in the absence of our filing this *amici curiae* brief.

ARGUMENT

I. The Soldiers' and Sailors' Civil Relief Act Was Not Intended to Affect the Right of the States to Impose Non-Discriminatory Sales and Use Taxes with Respect to Transactions to Which a Non-Resident Serviceman Is a Party.

A fundamental question here presented relates to the intent of Congress, both in its initial enactment in 1942 of and its subsequent amendments to section 514 of the Civil Relief Act. In *Dameron v. Brodhead,* 345 U.S. 322 (1953), this Court stated the purpose for the passage of section 514 of the Civil Relief Act as follows:

> "In fact, though the evils of potential multiple taxation may have given rise to this provision, Congress appears to have chosen the broader technique of the statute carefully, freeing servicemen from both *income* and *property* taxes imposed by any state by virtue of their presence there as a result of military orders. *It saved the sole right of taxation to the state of original residence whether or not that state exercised the right.* Congress, manifestly, thought that compulsory presence in a state should not alter the benefits and burdens of our system of dual federalism during service with the armed forces." 345 U.S. 322 at 326. (Emphasis added)

Thus, this Court held the tax immunity furnished by the Civil Relief Act was (1) granted with respect to income and property taxes and (2) that it was designed to prevent the state where the serviceman was stationed from imposing these types of taxes which could also be imposed by the state of residence, whether that state chose to impose these taxes or not.

The *Dameron* case was decided in 1953. The first amendment of section 514 of the Soldiers' and Sailors' Civil Relief Act subsequent to this decision was in 1962 when the law was amended to its present form. See, 76 Stat. 768. At the time of the 1962 amendment, Congress had the benefit of this Court's interpretation of that act from the *Dameron* decision as affording the limited immunity outlined above. The various state sales and use tax laws had been in operation for approximately 30 years at the time of this 1962 amendment. Congress was, therefore, obviously aware that these taxes were imposed on transactions to which servicemen were parties. If Congress had intended to expand the immunity afforded by the Civil Relief Act to cover such taxes, it was certainly capable of describing such excises

with the precision it used for this purpose in the Buck Act, 61 Stat. 641, 4 USCA § 105. That it chose not to do so seems very significant.

Moreover, Senate Report No. 2182 prepared with respect to the 1962 amendment of the Civil Relief Act conclusively demonstrates that no fundamental expansion of the Civil Relief Act was contemplated by Congress. Thus, Senate Report No. 2182 states:

> "The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 9747) to amend section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 to provide that where *personal property taxes may not be imposed upon property of a serviceman located in a State,* such taxes may not be imposed upon such property after he is transferred out of such State, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

EXPLANATION OF THE BILL

This bill amends the tax immunity provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 574(1)), so as to *clarify* a situation which sometimes results in taxation contrary to the intent of the act. More specifically, the bill provides that where a serviceman is absent from his residence or domicile solely by reason of compliance with military or naval orders, the tax immunity provision of existing law shall apply with respect to his personal property, or the use thereof, within any tax jurisdiction other than his State of residence or domicile, regardless of where such serviceman may be located in compliance with such orders.

The Soldiers' and Sailors' Civil Relief Act already makes clear that a serviceman, living with his family and owning personal property in a State other than his State of domicile, is not subject to taxation on his personal property by the nondomiciliary State.

In at least one situation, however, after a veteran was transferred overseas to a hardship post where he could not take his family, the nondomiciliary State imposed a tax on the serviceman's personal property. *The basic intent of the original Civil Relief Act was to exempt servicemen from this form of taxation, except by a State of residence or domicile. To permit taxation of personal property by a nondomiciliary State, because of a transfer to active duty outside such State, would obviously be violative of the original intent of the Soldiers' and Sailors' Civil Relief Act.* This legislation provides an equitable clarification of the situation: It assures that transfers of servicemen essential to their military duty shall not prejudice basic rights established by the Congress in recognition of the peculiar and special circumstances of military service.

There would be no cost resulting from enactment of the proposal. All of the provisions of the Soldiers' and Sailors' Civil Relief Act, other than those concerning insurance, are enforced by local courts and are not subject to centralized administration by a Federal agency.

The favorable reports of the Veterans' Administration, Bureau of the Budget, and Department of Defense now follow:"[2] (Emphasis added) U. S. Code, Cong. and Admin. News, 87th Congress, Second Session, 1962, at p. 2841.

Section 514 of the Civil Relief Act was passed by Congress in 1942. 56 Stat. 777. It has thus been part of the federal law for over a quarter of a century. The legislative history of the Act, however, contains nothing indicating an intent to apply the Act to sales and use taxes. In fact, not

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2. The reports referred to are in full accord with the intent to amend the Civil Relief Act for the limited purpose described in the "Explanation of the Bill" in Senate Report No. 2182 set forth above. These reports may be found in the Appendix to this brief.

once during that entire period did Congress give any notice to the states that sales and use taxes were being considered in relation to the Act. The states whose revenues would be adversely affected by expanding the immunity furnished by the Civil Relief Act to sales and use tax transactions have accordingly never had an opportunity to make their views on the matter known to Congress.

The democratic process requires that interested groups be afforded the opportunity to express their views on proposed legislation. This requirement can be met here by accepting the legislative history as an authoritative indicator that Congress intended to create only the limited immunity previously discussed. For the courts to establish areas of immunity for sales and use taxes not contemplated by either Congress or the states at the time the Civil Relief Act was enacted or amended would, on the other hand, ill serve the democratic process.

The dissenting opinion by Justice Douglas (concurred in by Justice Black) in the *Dameron* case, states in part:

> "In sum, the power to tax is basic to the sovereignty of the states. The creation of islands of tax immunity should therefore be sparingly made. The tax immunity here recognized is not contained in the Constitution. It cannot be fairly implied because Denver's tax does not burden the performance of any federal function." 345 U. S. 329.

Even stronger are the reasons in the instant case for not recognizing the new islands of immunity from sales and use taxes which the appellees are attempting to spring on the surprised states in complete disregard of the intent of Congress as evidenced by the legislative history of the Civil Relief Act.

Moreover, the construction given to the Civil Relief Act by the courts below would impose great administrative difficulties upon those states which impose sales and use tax laws. The problem of retailers in discovering which servicemen stationed in the state are nondomiciliary are obvious. This matter will no doubt be fully covered in the brief by Connecticut. Less obvious but equally onerous would be the problem presented to retailers of discovering whether the serviceman is absent from his domiciliary state on military orders or on the basis of his voluntary decision. For example, a soldier who is a California resident and is stationed in this State may decide to go to Las Vegas on a furlough or a soldier who is a resident of New York and is stationed in Nevada may similarly come to San Francisco. Under these circumstances, the Civil Relief Act could not possibly have any application to sales transactions involving such servicemen. However, the Nevada retailer or the California retailer, under the decisions of the Courts below, would not know whether to add a sales tax to the sales price of items sold to such serviceman unless he knew both the domicile of the soldier and whether he was in the particular state solely under military orders or by virtue of his own volition. Where, as here, Congress has been silent, it would seem improper for the judiciary to deliver such a burden to the several states and to the millions of retail establishments therein.

Additional problems which suggest themselves under the holdings of the courts below include the practical impossibility of preventing the further expansion of tax immunity which will inevitably result from servicemen buying property free of sales tax on behalf of others, either for friendship or profit. In addition, the problems which arise if immunity from sales tax is to apply to purchases made by

the wife and children of a serviceman whether stationed in the state of purchase or stationed abroad are staggering. It seems evident, moreover, that a serviceman stationed in his home state would be discriminated against since he would not enjoy the tax windfall afforded to servicemen from out of state.

II. There Are Additional Reasons Why the Civil Relief Act Is Inapplicable if the Legal Incidence of a State Sales Tax Is on the Retailer.

In the opinion of the Court of Appeals in this case (*U. S. v. Sullivan,* 398 F.2d 672), there is the unfortunate suggestion that the application of a sales tax to nondomiciliary servicemen would not necessarily be affected by whether the legal incidence of the tax was on the retailer or the purchaser. In that regard, the Court said:

> ". . . In addition, as with the use tax, the sales tax is computed as a percentage of the property's value, as approximated by its sales price. These basic characteristics indicate that the sales tax also falls within the definition of a tax 'in respect of . . . personal property.' " 398 F.2d 672 at 676.

While these *amici curiae* are in full accord with the position of Connecticut that the Connecticut sales and use tax properly applies to transactions involving nondomiciliary servicemen, it seems desirable to point out that there are additional reasons why a sales tax whose legal incidence is on the retailer would not be barred by the Civil Relief Act.

In *First Agricultural Bank v. Tax Commission,* 392 U. S. 339 (1968), this Court was careful to note that the legal incidence of a tax was of significance. In this regard, this Court said:

> ". . . The court below held, contrary to appellant's contention, that the Massachusetts sales tax is not im-

posed upon the bank as a purchaser, but is a tax upon vendors who sell tangible personal property to the bank. Of course if this is true, the bank cannot object if a particular vendor decides to pass the burden of the tax on to it through an increased price. . . ." 392 U. S. 339 at 346.

There is a clear distinction to be drawn between the legal incidence of sales tax under Connecticut law on the one hand and the legal incidence of the California sales tax and the Illinois Retailers' Occupation Tax on the other. The Court below relied upon the decision of the Connecticut Supreme Court in *Avco Manufacturing Corp. v. Connelly,* 145 Conn. 161, 140 Atl. 2d 479 (1958), in deciding that the Connecticut sales tax is in reality assessed against the buyer as well as the vendor of tangible personal property. In fact, the Connecticut sales tax law expressly provides that the retailer has a cause of action in debt against the purchaser for the tax and that the tax shall be added to the purchase price. Ch. 219, Conn. Gen. Stats. sec. 12-408/27. The Connecticut sales tax is in this sense identical to the Massachusetts tax which was held by this Court in the *First Agricultural Natl. Bank* case, *supra,* to have its incidence on the purchaser.

The California type of sales tax is entirely different. By statute the incidence is solely upon the retailer. Calif. Rev. & Tax. Code section 6051.[3] The retailer is allowed to reimburse himself from the customer to the extent that he can. Secs. 6052, 6053. However, and significantly for this case, it has been the consistent administrative and judicial construction of the California statutes over a 36 year period that the extent to which reimbursement is obtained is

3. All citations within this portion of the brief to statutes are to the California Revenue and Taxation Code unless otherwise indicated.

strictly a voluntary matter of contract between the retailer and his customer. As stated by the California Supreme Court over 30 years ago in *Western Litho. Co. v. State Board of Equalization,* 11 Cal. 2d 156, 78 P.2d 731 (1938):

> ". . . The tax being a direct obligation of the retailer and, so far as the consumer is concerned, a part of the price paid for the goods and nothing else, it is neither in fact nor in effect laid upon the consumer. It does not become a tax on the sale nor because of the sale, but remains an excise tax for the privilege of conducting a retail business measured by the gross receipts from sales." 11 Cal. 2d 156 at 164, 78 P.2d 731 at 735, 736.

If the contract between those parties fails to provide for reimbursement, the retailer has no right to collect from the buyer. *Clary v. Basalt Rock Co.,* 99 Cal. App. 2d 458, 222 P.2d 24 (1950); *Pac. Coast Eng. Co. v. State of California,* 111 Cal. App. 2d 31, 244 P.2d 21 (1952); *Livingston Rock & Gravel Co. v. DeSalvo,* 136 Cal. App. 2d 156, 288 P.2d 317 (1955). The retailer is in no way required to obtain reimbursement and may waive entirely his right to seek it. *Clary v. Basalt Rock Co., supra; Roth Drug Inc. v. Johnson,* 13 Cal. App. 2d 720, 57 P.2d 1022 (1936). Any reimbursement he and the customer agree upon is considered to be an addition to the sales price that is allowed to be separately stated so that the reimbursement itself is not taxed. *DeAryan v. Akers,* 12 Cal. 2d 781, 87 P.2d 847 (1939), cert. den. 308 U.S. 581 (1939). The California sales tax creates no relationship whatsoever between the State and the purchaser. Accordingly, that customer does not even have standing to bring suit regarding the sales tax. *Meyer Construction Co. v. Korbett,* 7 Fed. Supp. 616 (D. Calif. 1934); *Graham Bros., Inc. v. Los Angeles,* 6 Cal. App. 2d 203, 44 P.2d 451 (1935); *Western Litho. Co. v. State Board of Equalization,* 11 Cal. 2d 156, 78 P.2d 731 (1938).

This aspect of the California type sales tax is significant for two reasons. First, the California type of sales tax cannot be held to be a tax on a serviceman-purchaser. As indicated by the authority cited any tax reimbursement paid by the serviceman is strictly a voluntary contractual matter between him and his vendor. The vendor has no statutory rights in debt or otherwise against his purchasers. The State of California also has no rights of any sort against a serviceman-purchaser or any other purchaser under its sales tax law. This is equally true whether reimbursement of the vendor is contractually agreed to or not by that purchaser. The tax is thus not "in respect of" the serviceman's personal property. Rather it is levied solely upon the retailer for his privilege of operating as such.[4] Thus, the tax is not covered by the Civil Relief Act as that Act is designed solely to apply to taxes levied on the serviceman or in respect of his property. At a minimum, therefore, this Court should hold the Civil Relief Act does not apply to the type of sales tax law found in California and Illinois.

The other reason why the legal incidence of the California type sales tax cannot be ignored is perhaps more crucial. The *Dameron* case, *supra,* construed the Civil Relief Act to save the sole right of property and income taxation of servicemen to the state of original residence whether

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4. This distinction is substantial. Even assuming the Civil Relief Act covers those sales taxes having their incidence on the serviceman-purchaser it would not thereby cover a tax measured by sales to such purchasers but having its sole incidence on the retailer. It is a well established proposition that a subject which is itself exempt from taxation may nevertheless be included in the measure of a tax having its incidence on a nonexempt subject. See, *e.g., Pacific Co. v. Johnson,* 285 U. S. 480 (1932), (interest income exempt as such from income tax held includable in income figure used as measure of tax on franchise), *U. S. v. City of Detroit,* 355 U. S. 466 (1957) (tax exempt government property held includable in measure of tax in hands of non-government user.)

that state exercised the right or not. This was accomplished by the legal fiction declaring the serviceman and his property to have their taxable situs in the original state of residence regardless of their actual physical situs. Since the original state is given this right to levy the taxes denied to the state of presence the statute has not created a taxing hiatus. More precisely, the Act has never been construed to deny entirely to all states the right to tax in situations involving servicemen. Precisely this will happen, however, if the California type tax is held covered by the Act.

Consider the case of a California domiciliary serviceman stationed in Connecticut. The Civil Relief Act can and does maintain the California situs for his income and personal property taxes. It does not however establish a California "situs" for sales to him by Connecticut retailers. Thus, if Connecticut cannot tax sales to him no one can. California cannot tax a sale to its domiciliary because the sale did not occur here. *McLeod v. Dilworth Co.*, 322 U.S. 327 (1944). Furthermore, even if the "situs" of the sale could be fictitiously removed to California nothing would be accomplished. The previous authorities clearly show there is no statutory basis under California law for levying a sales tax on the serviceman-purchaser. Furthermore, it cannot tax the retailer as his "situs" could not possibly be affected by the Act and he is not a California retailer subject to the tax. Thus, no state could levy a sales tax and for the first time the Civil Relief Act would lead to complete tax avoidance. Amici Curiae submits that this result was never intended by Congress and that this Court should not allow its occurrence.

CONCLUSION

For the reasons set forth herein, as well as the reasons set forth in the brief filed on behalf of the State of Connecticut, it is respectfully submitted that Connecticut has for the last twenty years correctly interpreted the Civil Relief Act as not barring application of the Connecticut Sales and Use Tax Law to transactions involving servicemen and accordingly the decisions of the courts below should be reversed.

However, in the event this Court does not accept the proposition set forth above, it is respectfully submitted that this Court's opinion should limit the immunity afforded under the Civil Relief Act to those taxes whose legal incidence falls on servicemen and not extend the immunity to taxes the incidence of which is on a retailer or vendor.

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(Appendix Follows)

Appendix

Reports to Congress referred to in Senate Report No. 2182 respecting the 1962 amendment of section 514 of the Soldiers' and Sailors' Civil Relief Act. (Set forth in U. S. Code Cong. and Admin. News, 87th Congress, Second Session, 1962, pp. 2842-2844.)

"The favorable reports of the Veterans' Administration, Bureau of the Budget, and Department of Defense now follow:

SEPTEMBER 10, 1962.

Hon. LISTER HILL,
Chairman, Committee on Labor and Public Welfare,
U.S. Senate, Washington, D. C.

DEAR MR. CHAIRMAN: This is in further reply to your request for a report by the Veterans' Administration on H.R. 9747, 87th Congress.

The bill, if enacted, would amend the Soldiers' and Sailors' Civil Relief Act of 1940 to provide that where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, the provisions of section 514 (exempting personal property from certain State taxes) shall apply with respect to personal property, or the use thereof, within any tax jurisdiction other than the serviceman's place of residence or domicile, regardless of where the owner may be serving in compliance with such orders.

Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 App.U.S.C. 574), provides that for the purposes of taxation of personal property a person in the military service shall not be deemed to have lost a residence or domicile in any State, solely by reason

of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in any other State, while, and solely by reason of being, so absent. Section 514 further provides that for the purposes of taxation in respect to personal property of any such person by a State, of which such person is not a resident or in which he is not domiciled, personal property shall not be deemed to be located or to be present in or to have a situs for taxation in such State. However, nothing contained in section 514 prevents taxation by any State of personal property used in or arising from a trade or business, if the State otherwise has jurisdiction.

It is our understanding that the bill is designed to prevent the taxation by a State of the personal property of a serviceman which remains with his family in a State (which could not have taxed such property under section 514 so long as he was stationed in such State) after transfer of the serviceman overseas or to a post in a different State to which he did not or could not take his family.

The Soldiers' and Sailors' Civil Relief Act was designed to afford broad protection to persons while in military service. Except for article IV, relating to the guarantee of certain commercial life insurance premiums, the provisions of the act are not administered by the Veterans' Administration, although our loan assistance activities are sometimes affected if the veteran has reentered the service. Most of the provisions of the act, including section 514, are construed and enforced by the courts in individual cases.

It is noted that the text of the bill has been amended as recommended by the Secretary of the Army in his report of July 24, 1962, to the chairman of the Committee

on Veterans' Affairs, House of Representatives, and, as so amended, the bill would not be objectionable to the Department of Defense. As we indicated in our report to the House committee, a copy of which is enclosed for your ready reference, the Veterans' Administration defers to the views of the Departments of Defense and Justice as to the merits of the proposed legislation.

Advice was received from the Bureau of the Budget with respect to a similar report on this proposal to the House Committee on Veterans' Affairs that there was no objection to the presentation of such report from the standpoint of the administration's program.

Sincerely,

W. J. DRIVER,
Deputy Administrator
(For and in the absence of J. S. Gleason, Jr., Administrator).

Servicemen—State Taxes

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D. C., August 31, 1952.

Hon. LISTER HILL,
Chairman, Committee on Labor and Public Welfare,
U. S. Senate, Senate Office Building, Washington, D. C.

DEAR MR. CHAIRMAN: This is with reference to your request of August 28, 1962, requesting the views of this office with respect to H.R. 9747, a bill to amend section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended.

For the reasons set out in the report which the Department of the Army, on behalf of the Department of Defense, is submitting on this bill, the Bureau of the Budget would favor the enactment of H.R. 9747.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for
Legislative Reference.

DEPARTMENT OF THE ARMY,
Washington, D. C., September 4, 1962.

Hon. LISTER HILL,
Chairman, Senate Labor and Public Welfare Committee,
U. S. Senate.

DEAR MR. CHAIRMAN: Reference is made to your recent request to the Secretary of Defense for the views of the Department of Defense with respect to H.R. 9747, 87th Congress, a bill to amend section 514(1) of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended. The Department of the Army has been assigned responsibility for expressing the views of the Department of Defense on this bill.

The title of the bill states its purpose. The Department of the Army on behalf of the Department of Defense favors the bill as passed by the House of Representatives.

The existing provisions of section 514(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C.App. 574) as they relate to the taxation of personal property, presently provide that "for the purposes of taxation in respect of any person, or his personal property, * * * by any State, territory, possession, or political subdivision of any of the

foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State * * *, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State * * *, while, and solely by reason of being, so absent [; and] for the purposes of taxation in respect of the personal property * * * of any such person by any State * * * of which such person is not a resident or in which he is not domiciled, * * * personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, territory, possession, or political subdivision, or district." Section 514(1) contains a proviso to allow the taxation of personal property used in or arising from a trade or business. Under the amendment proposed in H.R. 9747 personal property which has acquired a tax exempt status under the present provisions of section 514(1) would retain this status while it was owned by a person in the military service who is not a resident of or domiciled in the political unit where the property is located. H.R. 9747 would not extend the present protection afforded service personnel under section 514(1) but would only clarify the present status of the law that the tax exempt status of the personal property of a serviceman is based upon the serviceman's absence from his State of residence or domicile in compliance with military or naval orders and not his presence in a State in compliance with military or naval orders. In at least one State, Virginia, the political subdivisions thereof are presently attempting to impose a personal property tax on the property of nondomiciliary service personnel which is left in the political subdivision after the serviceman is transferred elsewhere. At the present time a case, United States and Captain Har-

old S. Bottomley, Jr., USN v. Arlington County, is being litigated. This case involves an attempt by Arlington County, Va., to impose a personal property tax on the property of a Navy captain which was left in Arlington County when the captain was transferred to the command of a vessel which was deployed in the Far East. H.R. 9747 would clearly make the personal property in situations similar to the present court case nontaxable.

For the foregoing reasons, the Department of the Army on behalf of the Department of Defense recommends that the bill be favorably considered.

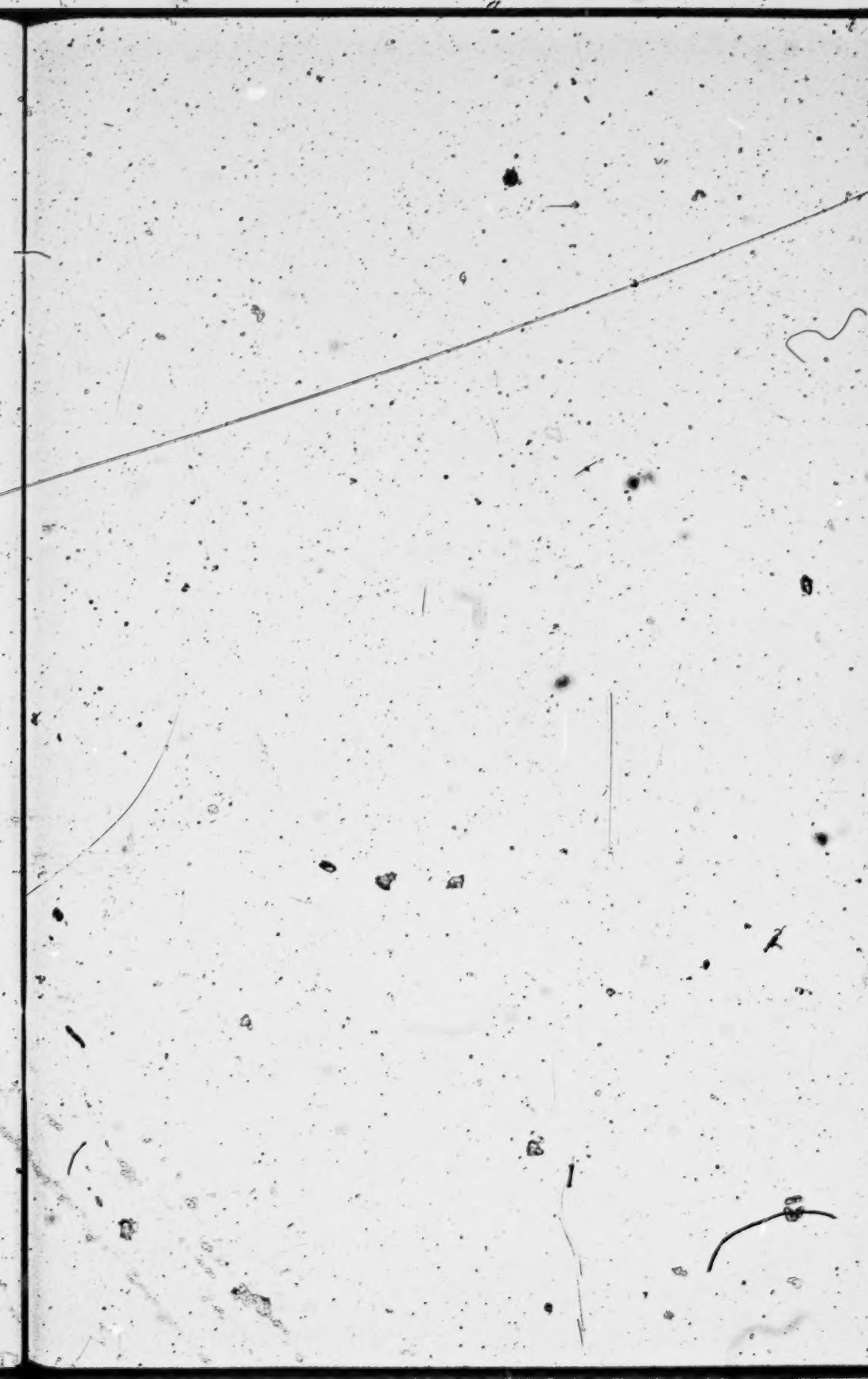
Enactment of this legislation will cause no apparent increase in budgetary requirements of the Department of Defense.

This report has been coordinated in the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely yours,

CYRUS R. VANCE,
Secretary of the Army."



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NO. 610

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1968

JOHN L. SULLIVAN, TAX COMMISSIONER
OF THE STATE OF CONNECTICUT, ET AL.,
Petitioners

vs.

UNITED STATES OF AMERICA
AND
LIEUTENANT STANDLEY D. SCHUMAN,
U.S.N., ET AL.,
Respondents

BRIEF OF AMICI CURIAE IN SUPPORT OF PETITIONERS' PETITION FOR WRIT OF CERTIORARI

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SUBJECT INDEX

	Page
Argument	1
Conclusion	6
Proof of Service	11

CITATIONS

Avco Mfg. Corp. v. Connelly, 145 Conn. 161, 140 A.2d 479 (1958)	2
California v. Buzard, 382 U.S. 386 (1966)	5
Calvert v. Canteen Co., 371 S.W.2d 556 (Tex.Sup. 1963)	2
Dameron v. Broadhead, 345 U.S. 322 (1952)	5
Dept. of Treasury v. Wood Preserving Co., 313 U.S. 62 (194)	4
International Harvester Co. v. Dept. of Treasury, 322 U.S. 340 (1940)	4
Le Maistre v. Leffers, 333 U.S. 1 (1948)	3
McGoldrick v. Berwind-White Coal Mining Co., 309 U.S. 33 (1940)	4
McGoldrick v. Felt & Tarrant Mfg. Co., 309 U.S. 70 (1940)	4
Pacific States Pipeline Co. v. Utah, 372 U.S. 605 (1953)	4
United States Trust Co. of N. Y. v. Helvering, 307 U.S. 57 (1939)	2

Statutes

50 U.S.C., App. Sec. 574, Section 514 (Soldiers and Sailors Civil Relief Act)	2-6

Texts

51 Am.Jur. 526-528, Taxation [illegible] 524	3
84 C.J.S. 437-443, Taxation, Sec. [illegible]	3

NO. 610

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Respondents

BRIEF OF AMICI CURIAE IN SUPPORT OF PETITIONERS' PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

ARGUMENT

Come now the State of Texas, with which twenty-eight other undersigned states join, and file this their brief as amici curiae in support of the petition of Petitioner, the State of Connecticut, for a writ of certiorari, for the reversal of the final judgment of the United States Court of Appeals, and for the relief prayed for by the Petitioner herein.

Connecticut, since 1947, has imposed a sales tax on the purchase of tangible personal property in Connec-

ticut by nonresident military personnel stationed in Connecticut pursuant to military orders (Chap. 219, Conn. Gen. Stat. Sec. 12-408). Although the ultimate incidence of the tax falls upon the person from whom the retailer is required by statute to collect reimbursement, the sales tax is a tax on the transaction and not upon the ownership of personal property, This is not only so in Texas but also in the other states joining as parties to this brief. *Calvert v. Canteen Co.*, 371 S.W. 2d 556 (Tex.Sup. 1963).

A use tax, designed to reach transactions which cannot be reached by the sales tax, is imposed to compliment the sales tax and to promote equality of taxation on personal property whether purchased in state or out-of-state. *Avco Mfg. Corp. v. Connelly*, 145 Conn. 161, 140 A.2d 479 (1958).

The Court of Appeals of the Second Circuit held that a state tax on the sale of tangible personal property within the state was a tax "in respect of personal property" within the purview of Section 514 (1) of the Soldiers and Sailors Civil Relief Act (50 U.S.C., App. Sec. 574), and was, therefore, in contravention of that Act.

The pertinent provision of Section 514 (1) is as follows:

> "For the purpose of taxation in respect of personal property . . . of any such [military] person by any state . . . of which such person is not a resident or in which he is not domiciled . . . , [his] personal property shall not be deemed to be located or present in or to have a situs for taxation in such state. . . ."

Exemptions from taxation do not rest upon implication. *United States Trust Co. of New York v. Helver-*

ing, 307 U.S. 57 (1939). Where a statute purports to grant an exemption from taxation, the universal rule of construction is that the particular provision for exemption must be construed strictly against the party asserting the exemption in the absence of an express legislative intent that the exemption should be otherwise construed. The exemption must be clearly defined. Otherwise, any doubt must be resolved against the party asserting the exemption, as exemptions from taxation are not favored. 51 Am. Jur. 526-528, Taxation, Section 524; 84 C.J.S. 437-443, Taxation, Section 227.

Although Section 514 is read "with an eye friendly to those who drop their affairs to answer their country's call," *Le Maistre v. Leffers,* 333 U.S. 1 (1948), a strict construction of the Act is required to determine whether the subject taxes are within the immunity provided. Under these rules of strict construction, it is clear that Section 514 does not grant a direct tax immunity but merely requires that the personal property of the nonresident serviceman be treated as remaining in his home state for purposes of taxation. The intent of Congress is clear to exempt the nonresident serviceman only from property taxes or taxes based on the situs of property. The immunity provided for in Section 514 should, therefore, be restricted to those taxes whose incidence are dependent upon the serviceman's residence and the situs of his personal property.

The Connecticut sales tax, a tax on the "privilege of selling tangible personal property," is dependent, not upon the situs of the property, but upon the location of the sales transaction. The incidence of the tax is upon a sales transaction rather than upon property or its use, based upon the residence or domicile of the

purchaser. The Connecticut tax, being a tax on a transaction, is not relevant to the criteria referred to in Section 514, since this section speaks only of a tax on personal property and not of a tax on the act of purchasing the property. The distinction between a tax which is dependent upon the residence or domicile of the purchaser and a sales and use tax, which is dependent only upon the situs of the sales transaction, is, in this case, controlling. The sales and use tax is imposed only upon the performance of an act and the fact that it is proportioned in amount to the value of the property does not make it a property tax.

The authority to exact a sales tax is dependent solely upon the authority to tax a transaction consummated within the state's borders regardless of the residence of the purchaser or the location of the place at which the property is to be used. The Court has traditionally upheld the application of similar taxes on sales even though the purchase and the only use of the property occur outside of the State: *International Harvester Co. v. Dept. of Treasury,* 322 U.S. 340 (1940); *Dept. of Treasury v. Wood Preserving Co.,* 313 U.S. 62 (1941); *McGoldrick v. Felt & Tarrant Mfg. Co.,* 309 U.S. 70 (1940), all of which involved a sales tax on purchases by out-of-state residents accepting delivery within the state; *McGoldrick v. Berwind-White Coal Mining Co.,* 309 U.S. 33 (1940), involving a sales tax on an interstate shipment to the state in which the sale occurred; *Pacific States Pipeline Co. v. Utah,* 372 U.S. 605 (195[illegible], involving a sales tax on an interstate shipment from the taxing state.

Section 514 has placed a nonresident serviceman in the same position as the private citizen who has maintained his residence and property only in his home

state. Therefore, if the tax would apply to a private citizen of the serviceman's home state, the tax would likewise apply to the nonresident serviceman. The tax in question, being a tax on the transaction rather than on the property, would clearly be applicable to any nonresident private citizen who purchased tangible personal property in the State of Connecticut. This is true whether the sale be made by mail order or otherwise.

It is submitted that the exemption provided for in Section 514 should be restricted to those taxes which are clearly within the language of the Act, that is, taxes which are dependent upon the situs of the property, *Dameron v. Broadhead,* 345 U.S. 322, (1952) or taxes involving an annual license fee on automobiles. *California v. Buzard,* 382 U.S. 386 (1966). The exemption provided for nonresident servicemen should not be extended by implication to include a tax not in the nature of a property tax or a tax based on the situs of property.

Had Congress intended to exempt all servicemen from all revenue raising tax measures, it must be presumed that it would have clearly done so by the use of appropriate language in the statute designed to bring about that result. Instead, in Section 514 (1), Congress merely declared that for purposes of taxation by a state (involving personal property of servicemen) of which state he is not a resident or in which he is not domiciled, that his property shall not be deemed to be located in or have a tax situs in that state. There is no necessary implication in this kind of language that Congress was exempting thereby all servicemen from all types of state tax revenue measures. It is only by indulging such an inference or implication that the statute can be expanded or stretched

to achieve such a result. Since the law does not permit tax exemptions to be construed by inference or implication but requires a strict construction, it necessarily follows that Section 514 (1) only exempts the serviceman from those taxes whose incidence is dependent upon the situs of the property or the individual's residence or domicile. The reach of such taxes falls short of sales and use taxes which do not come within such characterization. Furthermore, a sale (which is the incidence of the tax) is completed before the personal property becomes the property of the serviceman!

CONCLUSION

WHEREFORE, these amici curiae states submit that the relief prayed for herein by Petitioner State of Connecticut be granted, that a writ of certiorari issue, and that this Court correctly and finally dispose of the important issues presented to the end that the nonresident serviceman's tax exemption not be extended by construction and implication to include sales and use taxes and other types of state taxes which are not based on the situs of property, as are property taxes and other like taxes clearly comprehended by Section 514 (1) of the Soldiers and Sailors Civil Relief Act.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1968

No. 610

UNITED STATES OF AMERICA and LIEUTENANT STANLEY D. SCHUMAN, U. S. N., a member of the armed forces of the United States on active military service not a resident of or domiciled in the State of Connecticut, suing on behalf of himself and all servicemen or former servicemen similarly situated and affected,
Appellees,

v.

JOHN L. SULLIVAN, Tax Commissioner of the State of Connecticut; GERALD A. LAMB, Treasurer of the State of Connecticut; LOUIS I. GLADSTONE, Comptroller of the State of Connecticut; and ROBERT A. KILLIAN, Attorney General of the State of Connecticut,
Appellants.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF *AMICUS CURIAE* ON BEHALF OF THE STATE OF NEW YORK

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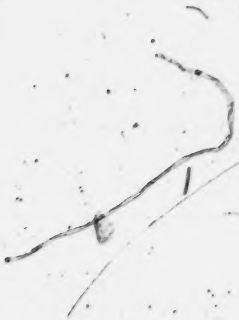

TABLE OF CONTENTS.

	PAGE
Statement	1
Questions Presented	2
ARGUMENT	3
The Soldiers' and Sailors' Civil Relief Act, § 574 does not immunize nonresident military personnel from the imposition of sales and use taxes since such immunity would be unconstitutional under the Tenth Amendment to the Federal Constitution	2
Conclusion	18

CASES CITED.

Braniff Airways v. Nebraska, 347 U. S. 590	6
California v. Buzzard, 382 U. S. 386	13
Carson v. Roane-Anderson Co., 342 U. S. 232	4
Case v. Bowles, 327 U. S. 92, 102	14
Central Hanover Bank Co. v. Kelly, 319 U. S. 94	6
Curry v. Canless, 307 U. S. 319	6
Dameron v. Brodhead, 345 U. S. 322, 325	6, 13, 14
Department of the Treasury v. Wood Corp., 313 U. S. 62	15
Freeman v. Hewitt, 329 U. S. 249, 258	6
General Motors v. Washington, 377 U. S. 436, 448	15, 16
Graves v. New York *ex rel.* O'Keefe, 306 U. S. 466	4, 6, 13
Henneford v. Silas Mason Co., 300 U. S. 577	3, 16
Howard v. Commissioner, 344 U. S. 624, 629	7
Humble Pipe Line Co. v. Waggonner, 376 U. S. 369	5
Matter of Atlantic Gulf & Pacific Co. v. Gerosa, 16 N. Y. 2d 1, 7	16
McGoldrick v. Berwind White Co., 309 U. S. 33	3
McGoldrick v. Compagnie Generale, 306 U. S. 430	3
McGoldrick v. Felt Tarrant Mfg. Co., 306 U. S. 62	3
McLeod v. Dilwroth Co., 322 U. S. 327, 331	15
Memphis Gas Co. v. Beeler, 315 U. S. 649	6
Miller Bros. v. Maryland, 347 U. S. 340, 344-345	15
Mississippi Fuel Corp. v. Cocreham, 382 F. 2d 929, 940, cert. den. 390 U. S. 1014	7

PAGE

Nat. Bellas Hess v. Dept. of Revenue, 386 U. S. 753 .. 14, 15
Nelson v. Montgomery Ward, 312 U. S. 373 3
Nelson v. Sears, Roebuck & Co., 312 U. S. 359 ..... 3, 15
Northwest Airlines v. Minnesota, 322 U. S. 292, 295 6
Offutt Housing Co. v. Sarpy County, 351 U. S. 253 .... 2, 5
Pacific Coast Dairy v. Department, 318 U. S. 285 4
Paul v. United States, 371 U. S. 245 5
Penn Dairies v. Milk Control Comm., 318 U. S. 261 4
Polar Co. v. Andrews, 375 U. S. 361 5
Scripto v. Carson, 362 U. S. 207, 210-211 15
Shell Oil Co. v. State Board of Equalization, 414 P. 2d 820, 822 17
Smith v. Davis, 323 U. S. 111, 117 7
Southern Pacific Co. v. Gallagher, 306 U. S. 167, 172 .. 16
Standard Oil Co. v. Johnson, 316 U. S. 481, 484 3
State Tax Comm. v. Aldrich, 316 U. S. 174 6
State Tax Comm. v. Van Cott, 306 U. S. 511 ..... 4, 13
Texas v. Florida, 306 U. S. 398 6
United States v. Arlington Co., 326 F. 2d 929 13
United States v. City of Detroit, 355 U. S. 456 ..... 13, 14
Walters v. City of St. Louis, 347 U. S. 231 15
Warren Trading Post v. Tax Comm., 380 U. S. 685 5
Wisconsin v. J. C. Penny Co., 311 U. S. 435, 440 14

STATUTES CITED.

Atomic Energy Act of 1946 [42 U. S. C. A. § 1809], 67 Stat. 575 4
Buck Act of 1940 ..... 2, 3, 6, 7, 14
49 Stat. 1519-1521 3
54 Stat. 1178 2
54 Stat. 1059, 1060-1061 3
56 Stat. 777 3
56 Stat. 777, § 514 (as amended is now § 574 of Title 50 App. U. S. C. A.) 5
Military Act of 1947 2
Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1178, Title 50 App. U. S. C. A. §§ 101 *et seq.*) . 3, 5
Soldiers' and Sailors' Civil Relief Act of 1940 as amended (54 Stat. 1178; Title 50 App. U. S. C. A. § 514 [now § 574]) 2, 7, 9
Soldiers' and Sailors' Civil Relief Act as amended in 1942 4
Title 4, U. S. C. A. § 104 by 61 Stat. 641 [1947] 4

PAGE

Title 4, U. S. C. A. §§ 405, *et seq.* 3
Title 50, App, U. S. C. A. § 514 now § 574 2
Wherry Military Housing Act of 1949 2
Connecticut Education, Welfare and Public Health Act, 1958, § 12-430 (5) 17
New York Tax Law, Art. 28, § 1118(7) 17

TEXTS.

Senate Report, No. 959, 78th Cong., 2d Sess., Vol. 10842, Sen. Misc. Repts. II, pp. 1-2 7
House Rept. No. 1514, 78th Cong., 2d Sess., Vol. 10846, House Misc. Repts., III, pp. 2-4 9
Senate Report, No. 2140; 76th Congress, 3rd Sess., Vol. 10432, Sen. Misc. Repts. V, Taxation of Governmental Securities and Salaries, pp. 37, 58 4
U.S. Cong. & Admin. News, 83rd Cong., 1953, Vol. 2, pp. 2379-2386 4
U. S. Code Cong. & Admin. News, 84th Cong. 1956, Vol. 3, pp. 3850-3853 4
U. S. Code Cong. & Admin. News, 87th Cong. 2d Sess., 1962, Vol. 2, pp. 2841-2844 .....9, 10

IN THE

Supreme Court of the United States

October Term, 1968

No. 610

UNITED STATES OF AMERICA and LIEUTENANT STANLEY D. SCHUMAN, U. S. N., a member of the armed forces of the United States on active military service not a resident of or domiciled in the State of Connecticut, suing on behalf of himself and all servicemen or former servicemen similarly situated and affected,

Appellees,

v.

JOHN L. SULLIVAN, Tax Commissioner of the State of Connecticut; GERALD A. LAMB, Treasurer of the State of Connecticut; LOUIS I. GLADSTONE, Comptroller of the State of Connecticut; and ROBERT A. KILLIAN, Attorney General of the State of Connecticut,

Appellants.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF *AMICUS CURIAE* ON BEHALF OF THE STATE OF NEW YORK

Statement

Because of the adverse effect of the decision below upon the tax revenue of the State of New York, this brief is submitted in support of the appellants' contentions for reversal.

Questions Presented

1. Whether the imposition and collection of Sales and Use taxes on the purchase or use of tangible personal property in a State by non-resident military personnel stationed there pursuant to military orders contravenes Section 514 of the Soldiers' and Sailors' Civil Relief Act.

2. Whether Section 514 of the Soldiers' and Sailors' Civil Relief Act, as interpreted by the Court of Appeals for the Second Circuit, is an unconstitutional infringement upon the reserved power of the states to lay and collect taxes?

ARGUMENT

The Soldiers' and Sailors' Civil Relief Act § 574 does not immunize nonresident military personnel from the imposition of sales and use taxes since such immunity would be unconstitutional under the Tenth Amendment to the Federal Constitution.

We submit that the Court below completely misconstrued the tax concepts involved in both the Buck Act, *infra* and in the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (54 Stat. 1178; Title 50 App. U. S. C. A. § 514 [now § 574]),* and consequently arrived at an erroneous conclusion. In the light of the reasons for their respective enactments, both Acts serve completely different ends, although they are intertwined and in *pari materia,* as were the Military Act of 1947 and the Wherry Military Housing Act of 1949 which were involved in *Offutt Housing Co.* v. *Sarpy County,* 351 U. S. 253 [1956], for example.

* These statutes are reproduced in Appellants' Brief.

The Buck Act of 1940, *infra*, stemmed from a Congressional Act of 1934 which permitted state taxation of gasoline sold by or through post exchanges except when the gasoline was for the *exclusive* use of the United States (49 Stat. 1519-1521; see *Standard Oil Co.* v. *Johnson*, 316 U. S. 481, 484 [1941].

The Buck Act was enacted in 1940 to enlarge state taxation within Federal enclaves by authorizing sales and use taxes, among others (54 Stat. 1059, 1060-1061; 4 U. S. C. A. §§ 405, *et seq.*). It must be borne in mind that the Buck Act was passed October 9, 1940 whereas the Soldiers' and Sailors' Civil Relief Act of 1940 was passed on October 17th (54 Stat. 1178, 50 U. S. C. A. App. §§ 101, *et seq.*). In 1940, however, this latter Act did not contain any provision with respect to the imposition of State taxes upon nonresident military personnel. Such provisions were not enacted until October 6, 1942 (56 Stat. 777). In contrast, however, the very enactment of the Buck Act in 1940 demonstrates Congressional awareness at that time of the existence of State and local sales taxes imposed for the support of State and local governments. Military personnel became subject to such taxation upon their purchases within Federal enclaves to serve this end. This Court, too, was fully aware of sales and use taxes, at the same time, through its decisions (see, *e. g.*, *Henneford* v. *Silas Mason Co.*, 300 U. S. 577 [1936]; *McGoldrick* v. *Berwind White Co.*, 309 U. S. 33 [1939]; *McGoldrick* v. *Felt Tarrant Mfg. Co.*, 306 U. S. 62 [1939]; *McGoldrick* v. *Compagnie Generale*, 306 U. S. 430 [1939]; *Nelson* v. *Sears, Roebuck & Co.*, 312 U. S. 359 [1940]; *Nelson* v. *Montgomery Ward*, 312 U. S. 373 [1940]; others may be cited, of course). Moreover, Congress in 1940 also was fully aware of the fact that military personnel, as Federal employees, were subject to state income taxation upon their income as the result of this

Court's decisions denying constitutional immunity in *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466 [1939]; *State Tax Comm.* v. *Van Cott*, 306 U. S. 511 [1939] (see also *Senate Report*, No. 2140; 76th Congress, 3rd Sess., Vol. 10432 *Sen. Misc. Repts. V*, "Taxation of Governmental Securities and Salaries", pp. 37, 58). It can hardly be seriously argued that Congress intended, by the Soldiers' and Sailors' Civil Relief Act, as amended in 1942, *supra*, to deny to the States their constitutional taxing powers to impose sales and use taxes upon private retail sales transactions as entered into by nonresident military personnel outside of a Federal enclave when Congress two years earlier had authorized and continued to authorize the very taxation of retail sales transactions by the very same personnel *within* a Federal enclave. This would be *reductio ad absurdum*, and squarely contrary to Congressional policy and intent which has been equally solicitous elsewhere over the costs of local government by extending State taxing jurisdiction in various Federal enclaves when the need has arisen (see, for example, the amendment to Title 4, U. S. C. A. § 104, *supra* by 61 Stat. 641 [1947] so as to include Guam within the definition of territory in order to permit Guam to tax within Federal enclaves (*U. S. Code Cong. & Admin. News*, 84th Cong. 1956, Vol. 3, pp. 3850-3853), and to permit the imposition of State and local sales and use taxes upon Atomic Energy project contractors to overcome this Court's decision in *Carson* v. *Roane-Anderson Co.*, 342 U. S. 232 [1951] by an amendment in 1953 to the Atomic Energy Act of 1946 [42 U. S. C. A. § 1809], 67 Stat. 575; (*U. S. Cong. & Admin. News*, 83rd Cong., 1953, Vol. 2, pp. 2379-2386). Of course, this Congressional consent is necessary to overcome Federal supremacy as to Federal enclaves (see *e. g. Pacific Coast Dairy* v. *Department*, 318 U. S. 285 [1942]; *Penn Dairies* v. *Milk Control*

Comm., 318 U. S. 261 [1942]; *Offutt Housing Co.* v. *Sarpy Co.*, 351 U. S. 253 [1955]; *Paul* v. *United States*, 371 U. S. 245 [1962]; *Polar Co.* v. *Andrews*, 375 U. S. 361 [1963]; *Humble Pipe Line Co.* v. *Waggonner*, 376 U. S. 369 [1964], *cf. Warren Trading Post* v. *Tax Comm.*, 380 U. S. 685 [1964]).

As stated, the enactment in 1940 of the Soldiers' and Sailors' Civil Relief Act, *supra*, contained no provisions for "residence for tax purposes". This was added in 1942 by 56 Stat. 777, § 514 (as amended, it is now § 574 of Title 50 App. U. S. C. A.) to merely fix domicile, as follows:

> "Sec. 514. For the purposes of taxation in respect of any person, or of his *property, income,* or *gross income,* by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a *residence or domicile* in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a *residence or domicile* in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the income or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to the date of the enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942." (Emphasis added.)

This was a clear expression of Congressional concern, prophetic in nature, as to the tax implications and pitfalls which might befall servicemen under the doctrine of *mobilia sequuntur personam* and the situs of their property which had been the subject of much review by this Court prior thereto and of great importance of domicile to State taxation (see *e. g., Texas* v. *Florida,* 306 U. S. 398 [1938]; *Curry* v. *Canless,* 307 U. S. 319 [1938]; *Memphis Gas Co.* v. *Beeler,* 315 U. S. 649 [1941]; *State Tax Comm.* v. *Aldrich,* 316 U. S. 174 [1941]; *Central Hanover Bank Co.* v. *Kelly,* 319 U. S. 94 [1942]), and which has also been a perplexing problem since (see, *e. g., Northwest Airlines* v. *Minnesota,* 322 U. S. 292, 295 [1943]; *Braniff Airways* v. *Nebraska,* 347 U. S. 590 [1953]). In no way was the Relief Act to be a limitation upon the sovereign taxing powers of the States reserved by the Tenth Amendment to the Federal Constitution, since this would be unconstitutional thereunder (see *e.g., Graves* v. *New York ex rel. O'Keefe, supra,* 306 U. S. 466, *infra*) which was recognized by this Court in *Dameron* v. *Brodhead,* 345 U. S. 322, 325 [1952], *infra.*

Congress was concerned *solely* with the avoidance of double taxation through property and income taxation—not immunity from taxation—which might result from domicile *vis-a-vis* residence, as later amendments make quite clear, *infra.* Indeed, this Court has said in construing the Buck Act, *supra* (*Freeman* v. *Hewitt,* 329 U. S. 249, 258 [1946]):

> "Latin tags like *mobilia sequunter personam* often do service for legal analysis, but they ought not to confound constitutional issues. * * * 'It is a fiction, the historical origin of which is peculiar to scholars, and it is this fiction that gives whatever meaning it has to the saying * * *. But being a fiction it is not allowed to *obscure the facts, when the facts become important.*'" (Emphasis added.)

The facts are simply these. In 1942 with existing knowledge of sales and use taxes, *supra,* Congress was concerned *solely* with limiting *property* taxes and *income* taxes to the original domiciliary state of military personnel when it enacted § 514 to the Soldiers' and Sailors' Civil Relief Act, *supra,* not with interfering with the power to impose sales and use taxes upon private sales and use transactions, otherwise fully retained by the States. The rule is settled under Federal statutes that "Tax exemptions being the exception rather than the rule, much clearer language evidencing an intent to immunize * * * is necessary under these circumstances." (*Smith* v. *Davis,* 323 U. S. 111, 117 [1944].) Consequently, under principles of *ejusdem generis,* sales and use taxes are not included within nor contemplated by those taxes enumerated in § 514 now § 574, *supra,* just as a "severance" tax is not considered within the meaning of an income tax under the Buck Act (*Mississippi Fuel Corp.* v. *Cocreham,* 382 F. 2d 929, 940 [C. A. 5th Cir.] [1967] cert. den. 390 U. S. 1014; *cf: Howard* v. *Commissioner,* 344 U. S. 624, 629 [1957]). This is made quite clear by subsequent Congressional amendments. Thus, in 1944, Congress amended § 514 by adding thereto the word "personal" before property so as to make clear that "personal property taxes" fell within its scope, along with "income" taxes previously provided. The Senate, reported, in part, as follows (1944 *Senate Report,* No. 959, 78th Cong., 2d Sess., Vol. 10842, *Sen. Misc. Repts.* II, pp. 1-2):

> "The purpose of the proposed legislation is to clarify the intent of section 514 of the Soldiers' and Sailors' Civil Relief Act as added by section 17 of the act of October 6, 1942 (56 Stat. 769, 777). When that provision of law was added to the act to relieve persons in service from liability of *double* taxation by being moved from one State to another under orders, it was intended that it should apply to personal-property taxes as well as to income taxes. As presently consti-

tuted, it primarily affects taxes in respect to income and other taxes based on residence or domicile, but it does not prevent the State of 'temporary residence' from *taxing tangible personal property actually located in such State so long as the tax does not depend on residence or domicile.* A few States have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdiction does not acquire a situs for taxation, but it has been held that section 514 of the act as now written does not affect the right of a State to assess *personal-property* taxes on property within its jurisdiction. The result has been that servicemen find themselves at times subjected to *personal-property* taxes on the same property in more than one State during the same calendar year by reason of being moved under orders.

"Your committee considers that the existing law pertaining to State taxation of the personal property of persons in military service present in the various States in compliance with military orders should be clarified; that the military personnel concerned should not be subjected to multiple taxation of personal property by the various States and should be given the same protection as to *personal property* taxes as is now provided in respect of income taxes. (Emphasis added.)

And, at page 2, *ibid.*, the Secretary of War advised:

"As presently worded, section 514 of the act primarily affects taxes in respect of income and other taxes based on residence or domicile. Nothing in that section prevents the State of 'temporary residence' from taxing tangible personal property actually located in such State, so long as the tax does not depend on residence or domicile. A few States, however, have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdictions does not acquire a situs for taxation."

And the House Military Affairs Committee reported, *ibid.*, p. 3:

"When the Soldiers' and Sailors' Civil Relief Act of 1940 was amended by the act of October 6, 1942, a provision was written into the act to relieve persons in the service from liability of double taxation by being moved from one State to another under orders. It was intended that this should apply to personal property taxes as well as income taxes. However, it has been held that under the wording of such amendment personal property taxes were not included. The result has been that servicemen find themselves at times subjected to personal property taxes in more than one State by reason of being moved under orders.

"The purpose of the present act is to correct this situation and to give to the servicemen the same protection as to personal property taxes that they now have as to income taxes."

A similar report was made by the House Military Affairs Committee (*House Report* No. 1514, 78th Cong., 2d Sess.; Vol. 10846, *House Misc. Repts.*, III, pp. 2-4). Again in 1962 Congress made a further clarifying amendment to § 574 (formerly § 514, *supra*) to make even more certain that *only* personal property taxes were contemplated—not sales and use taxes—upon favorable recommendations of the Division of Veterans' Affairs and the Department of the Army (see *U. S. Code Cong. and Admin. News*, 1962, 87th Cong. 2d Sess., Vol. 2, pp. 2841-2844). Since they reported, respectively, *ibid.*, p. 2842):

"Dear Mr. Chairman: This is in further reply to your request for a report by the Veterans' Administration on H. R. 9747, 87th Congress.

"The bill, if enacted, would amend the Soldiers' and Sailors' Civil Relief Act of 1940 to provide that where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, the provisions of section 514 (exempting personal property from certain State taxes) shall apply with respect to personal property, or the use thereof, within any tax jurisdiction other than

the serviceman's place of residence or domicile, regardless of where the owner may be serving in compliance with such orders.

Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 App. U. S. C. 574), provides that for the purposes of taxation of personal property a person in the military service shall not be deemed to have lost a residence or domicile in any State, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in any other State, while, and solely by reason of being, so absent. Section 514 further provides that for the purposes of taxation in respect to personal property of any such person by a State, of which such person is not a resident or in which he is not domiciled, personal property shall not be deemed to be located or to be present in or to have a situs for taxation in such State. However, nothing contained in section 514 prevents taxation by any State of personal property used in or arising from a trade or business, if the State otherwise has jurisdiction.

It is our understanding that the bill is designed to prevent the taxation by a State of the personal property of a serviceman which remains with his family in a State (which could not have taxed such property under section 514 so long as he was stationed in such State) after transfer of the serviceman overseas or to a post in a different State to which he did not or could not take his family. * * *"

And, *ibid.*, pp. 2843-2844:

"* * * The existing provisions of section 514(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U. S. C. App. 574) as they relate to the taxation of personal property, presently provide that 'for the purposes of taxation in respect of any person, or his personal property, * * * by any State, territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in

any State * * *, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State * * *, while, and solely by reason of being, so absent [; and] for the purposes of taxation in respect of the personal property * * * of any such person by any State * * * of which such person is not a resident or in which he is not domiciled, * * * personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, territory, possession, or political subdivision, or district.' Section 514(1) contains a proviso to allow the taxation of personal property used in or arising from a trade or business. Under the amendment proposed in H. R. 9747 personal property which has acquired a tax exempt status under the present provisions of section 514(1) would retain this status while it was owned by a person in the military service who is not a resident of or domiciled in the political unit where the property is located. H. R. 9747 would not extend the present protection afforded service personnel under section 514(1) but would only clarify the present status of the law that the tax exempt status of the personal property of a serviceman is based upon the serviceman's absence from his State of residence or domicile in compliance with military or naval orders and not his presence in a State in compliance with military or naval orders. In at least one State, Virginia, the political subdivisions thereof are presently attempting to impose a personal property tax on the property of nondomiciliary service personnel which is left in the political subdivision after the serviceman is transferred elsewhere. At the present time a case, *United States and Captain Harold S. Bottomley, Jr. USN* v. *Arlington County,* is being litigated. This case involves an attempt by Arlington County, Va., to impose a personal property tax on the property of a Navy captain which was left in Arlington County when the captain was transferred to the command of a vessel which was deployed in the Far East. H. R. 9747 would clearly make the personal property in situations similar to the present court case nontaxable. * * *"

The Committee on Veterans' Affairs reported, *ibid.*, p. 2841:

SENATE REPORT NO. 2182

"The Committee on Veterans' Affairs, to whom was referred the bill (H. R. 9747) to amend section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 to provide that where *personal property* taxes may not be imposed upon property of a serviceman located in a State, such taxes may not be imposed upon such property after he is transferred out of such State, having considered the same, report favorably thereon without amendment and recommended that the bill do pass.

EXPLANATION OF THE BILL

This bill amends the tax immunity provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U. S. C. App. 574(1)), so as to clarify a situation which sometimes results in taxation contrary to the intent of the act. More specifically, the bill provides that where a serviceman is absent from his residence or domicile solely by reason of compliance with military or naval orders, the tax immunity provision of existing law shall apply with respect to his *personal property*, or the use thereof, within any tax jurisdiction other than his State of residence or domicile, regardless of where such serviceman may be located in compliance with such orders.

The Soldiers' and Sailors' Civil Relief Act already makes clear that a serviceman, living with his family and owning *personal property* in a State other than his State of domicile, is not subject to taxation on *his personal property* by the nondomiciliary State.

In at least one situation, however, after a veteran was transferred overseas to a hardship post where he could not take his family, the nondomiciliary State imposed a tax on the serviceman's personal property. The basic intent of the original Civil Relief Act was to exempt servicemen from this *form of taxation*, except by a State of residence or domicile. To permit taxation of personal property by a nondomiciliary State, because of a transfer to active duty outside such State,

> would obviously be violative of the original intent of the Soldiers' and Sailors' Civil Relief Act. This legislation provides an equitable clarification of the situation: It assures that transfers of servicemen essential to their military duty shall not prejudice basic rights established by the Congress in recognition of the peculiar and special circumstances of military service." (Emphasis added.)

We submit that the Court below completely misread the foregoing legislative reports by equating sales and use taxes with those taxes specifically enumerated. This is made quite clear, too, by the Court's erroneously equating a motor vehicle "license fee" obtained from a domiciliary State with a use tax imposed by a host State. The two exactions are just not the same, as the opinion of this Court in *California* v. *Buzzard,* 382 U. S. 386 (1966) and in the *Brodhead* case, *supra,* make obvious, as does *United States* v. *Arlington Co.,* 326 F. 2d 929, C. C. A-4 (1964), all of which were misconstrued below. Judicial notice, of course, may be taken of the fact that many States imposed a personal property tax in the 1940's as distinct and separate revenue measures and Congress was well aware of this.

It is clear, therefore, the sales and use taxes involved herein concerning *private* retail transactions were never intended by the Congress to fall within the ambit of the Soldiers' and Sailors' Civil Relief Act, *supra,* as shown above. Indeed, even a specific statutory exemption therein would be prohibited by the Federal Constitution, as unconstitutional for several reasons. First, it would surely be an unconstitutional invasion of the sovereign taxing powers of the States under the Tenth Amendment, since Congress would not be "acting within the proper scope of its power" (see *Graves* v. *O'Keefe* and *Tax Comm.* v. *Van Cott, supra,* and *cf. United States* v. *City of Detroit,* 355 U. S. 463, 474 [1957]). This, of course, was fully recognized by this

Court in its opinion in *Dameron* v. *Brodhead, supra,* 345 U. S. 322 (1952), wherein it said as to domicile and the *personal property tax* there involved, but fully distinguishable from sales and use taxes (*ibid.,* p. 325):

> "What has been said in no way affects the reserved powers of the states to tax. For this statute merely states that the taxable domicile of servicemen shall not be changed by military assignments. This we think is within the federal power." (See, also, *ibid.,* p. 326.)

It is only where Federal supremacy exists that the Tenth Amendment yields, since as this Court has said "* * * the Tenth Amendment 'does not operate as a limitation upon the powers, express or implied, delegated to the national government' ". (*Case* v. *Bowles,* 327 U. S. 92, 102 [1945].) But private retail sales and use transactions entered into by *non-resident* military personnel in the "host" State wholly *outside* of Federal enclaves, having absolutely no effect upon the Federal government, are entitled to no implied constitutional immunity as they would be *within* a Federal enclave unless otherwise waived as by the Buck Act, *supra* (see above citations). Consequently, these private retail sales and use transactions are no different from those which have been denied such constitutional immunity when entered into, for example, by private parties (*United States* v. *City of Detroit,* 355 U. S. 456 [1957]). The precise same question in cases involving claimed immunity under the commerce clause is present here, *viz.:*

> "The simple and controlling question is whether the state has given anything for which it can ask in return." (*Nat. Bellas Hess* v. *Dept. of Revenue,* 386 U. S. 753, 754-755 [1966]; see also *Wisconsin* v. *J. C. Penny Co.,* 311 U. S. 435, 440 [1940]).

And all the Constitution requires is some "definite link, some minimum connection, between a state and the person,

property or *transaction* it seeks to tax''." (Emphasis added; *Miller Bros.* v. *Maryland,* 347 U. S. 340, 344-345 [1953]; *Scripto* v. *Carson,* 362 U. S. 207, 210-211 [1959]; *General Motors* v. *Washington,* 377 U. S. 436, 448 [1963]; *Nat. Bellas Hess* v. *Dept. of Revenue, supra,* 386 U. S. 753 [1966].) This nexus or minimal link is provided by the physical presence of military personnel within the taxing "host" State and the purely "local transactions" involved either as to a retail purchase or use voluntarily entered into (*Department of the Treasury* v. *Wood Corp.,* 313 U. S. 62 [1940].)

Secondly, if statutory immunity is accorded to these purely private sales and use transactions entered into by non-resident military personnel, then there is an unconstitutional discrimination and a denial of equal protection, and a denial of due process of law under the Fourteenth Amendment to those who do pay, since there exists absolutely no rational basis for classification between the two groups of private consumers (*cf., e. g., Walters* v. *City of St. Louis,* 347 U. S. 231 [1954]).

Lastly, there is no constitutional reason for immunity based upon any fear of multiple taxation by the state of residence versus the state of domicile. While the nature of a sales tax is entirely different from a use tax, both must be paid by military personnel. As this Court has observed: "Though sales and use taxes may secure the same revenues and secure complementary purposes, they are, as we have indicated, taxes on different transactions and for different opportunities afforded by a State." (*McLeod* v. *Dilworth Co.,* 322 U. S. 327, 331 [1943].) They are not mutually inclusive although "complementary" (see *e. g., Nelson* v. *Sears, Roebuck & Co.,* 312 U. S. 359, 364 [1940].) A sales tax is for the privilege of purchase whereas the

use tax is for the enjoyment of property which is imposed to avoid escaping the former.

The circumstances present here disclose that no multiple tax burden exists in a "constitutional sense" (see *e. g. General Motors Corp.* v. *Washington,* 377 U. S. 436, 449 [1963]) because a sales tax imposed in one State is solely upon the private retail transaction entered into for the privilege of purchase as well as for the privileges afforded by the State of sale. This is one taxable event. If, however, the item of purchase is subsequently removed voluntarily to the host State which thereafter exacts a use tax for the privilege of enjoying its use, this then becomes a separate and distinct taxable event in order to offset the loss of revenue which otherwise would have been derived from a sales tax if the item had been purchased in the resident host State. This, of course, is not uncommon, nor unreasonable in a constitutional sense. It is merely a practical recognition by the various States of their need for revenue from two valid sources which takes into account the mobility of the nation's populace in this day and age, irrespective of the reasons for such mobility, military or otherwise. All are treated equally and fairly in each taxable transaction. Since there are two separate and distinct taxable transactions, there can be no multiple taxation of the same taxable event by more than one State and each State exacts its own tax for a different taxable event occurring within its borders having no extra territorial effect upon the other jurisdiction. Under these circumstances, this Court "has refrained from passing on the question of 'multiple taxation' " (see *e. g., Henneford* v. *Silas Mason Co.,* 300 U. S. 577 [1936]; *Southern Pacific Co.* v. *Gallagher,* 306 U. S. 167, 172 [1939]; *General Motors Corp.* v. *Washington,* 377 U. S. 436, 449 [1963]; *cf., Matter of Atlantic Gulf & Pacific Co.* v. *Gerosa,* 16 N. Y. 2d 1, 7

[1966]; app. dism. 382 U. S. 368 for want of a substantial Federal question; *Shell Oil Co.* v. *State Board of Equalization,* 414 P. 2d 820, 828 [1966], app. dism. 386 U. S. 211) for want of a substantial Federal question. Moreover, in any event, Connecticut specifically grants a credit for the payment of a sales or use tax to another State, as follows (Education, Welfare and Public Health Tax Act (Rev. 1958, as amended):

"Sec. 12-430 (5)

(5) *Payment of sales or use tax to another state.* If any article of tangible personal property has already been subjected to a sales or use tax by any other state or political subdivision thereof and payment made thereon in respect to its sale or use in an amount less than the tax imposed by this chapter, the provisions of this chapter shall apply, but at a rate measured by the difference, only, between the rate herein fixed and the rate by which the previous tax upon the sale or use was computed. If such tax imposed in such other state or political subdivision thereof is equivalent to or in excess of the rate imposed under this chapter at the time of such sale or use, then no tax shall be due on such article."

New York grants a credit where reciprocity exists, as follows (N. Y. Tax Law, Art. 28, § 1118, 59 McKinney's Consolidated Laws of New York):

"§ 1118(7)

(7) In respect to the use of property or services to the extent that a retail sales or use tax was legally due and paid thereon, without any right to a refund or credit thereof, to any other state or jurisdiction within any other state but only when it is shown that such other state or jurisdiction allows a corresponding exemption with respect to the sale or use of tangible personal property or services upon which such a sales tax or compensating use tax was paid to this state. To the extent that the tax imposed by this article is at a

higher rate than the rate of tax in the first taxing jurisdiction, this exemption shall be inapplicable and the tax imposed by section eleven hundred ten of this chapter shall apply to the extent of the difference in such rates."

CONCLUSION

The Judgment below should be reversed in all respects.

Dated: February 24, 1969.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 610

JOHN L. SULLIVAN, Tax Commissioner of the State of Connecticut; GERALD A. LAMB, Treasurer of the State of Connecticut; LOUIS I. GLADSTONE, Comptroller of the State of Connecticut; and ROBERT K. KILLIAN, Attorney General of the State of Connecticut;

Appellants,

v.

UNITED STATES OF AMERICA, ET AL.

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF OF APPELLANTS

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INDEX

	Page
Reference to Opinions Below	1
Grounds of Jurisdiction	1
Questions Presented	2
Constitutional Provision and Statutes Involved	2
Statement of the Case	4
Summary of Argument	6
Argument	
I. Section 514 of the Soldiers' and Sailors' Civil Relief Act does not remove the jurisdictional grounds for imposition of the Connecticut Sales and Use Taxes.	8
II. The Legislative History clearly evidences that Congress did not intend Section 514 to encompass Sales and Use Taxes.	11
III. This is a case of first impression.	16
IV. Section 514 should not be liberally construed herein.	18
V. The decision of the lower court holding that Sales and Use Taxes come within the scope of Section 514 produces unjust and absurd results.	22
VI. As interpreted by the Court of Appeals, Section 514 is an unconstitutional infringement on the reserved power of the States to lay and collect taxes.	24
CONCLUSION	27

APPENDIX

Connecticut Education, Welfare and Public Health Tax Act (Conn. Gen. Stat., Secs. 12-406 to 12-432a) 2B

Senate Report No. 959, 78th Congress, 2d Sess. 1 (1944) 43B

H. R. Report No. 1514, 78th Congress, 2d Sess. 2 (1944) 52B

Senate Report No. 2182, 87 Congress, 2d Sess. 2 (1962) 59B

CASES CITED

	Page
Alabama v. *King & Boozer*, 314 U.S. 1, (1941)	10
Avco Mfg. Co. v. *Connelly*, 145 Conn. 161, 140A 2d 479 (1958)	10
Briggs v. U.S., 143 U.S. 346 (1892)	11
California v. *Buzard*, 382 U.S. 386 (1966)	16
City of Detroit, et al v. *The Murray Corporation of America*, 355 U.S. 489 (1958)	2
Costello v. *United States*, 365 U.S. 265 (1961)	20
Dameron v. *Brodhead*, 345 U.S. 322 (1953)	16
First Agricultural National Bank v. *State Tax Commissioner*, 393 U.S. 339 (1968)	10
Graves v. *New York ex rel. O'Keefe*, 306 U.S. 466 (1939)	18
Hale v. *Iowa State Board of Assessors and Review*, 302 U.S. 95 (1937)	18
Henneford v. *Silas Mason Co.*, 300 U.S. 577 (1936)	13
In re Chapman, Petitioner, 166 U.S. 661 (1897)	22
Lane County v. *Oregon*, 7 Wall 71	25
LeMaistre v. *Leffers*, 333 U.S. 1 (1948)	18
Monamotor Oil Co. v. *Johnson*, 292 U.S. 86 (1933)	13
Oklahoma Tax Comm. v. *United States*, 319 U.S. 598 (1943)	18

State Board of Assessors v. *Comptoir National D'Escompte*, 191 U.S. 388 (1903) 9

Union Pacific Railway Company v. *Peniston*, 18 Wall 5 (1873) 19

United States v. *City of Detroit*, 355 U.S. 466 22

United States v. *Arlington County*, 326 F. 2d 929 (1964) 15

United States v. *Bryan*, 339 U.S. 323 (1949) 22

United States v. *Katz*, 271 U.S. 354 (1926) 22

United States v. *Oregon & Railroad*, 164 U.S. 526 (1896) 22

United States v. *Robel*, 398 U.S. 258 (1967) 25

United States v. *Zacks*, 375 U.S. 59, 84 S. Ct. 178 12

CONSTITUTION:

U. S. Const., X Amendment 2

U. S. Const., Art. 1, Sec. 8, cl. 11 24

U. S. Const., Art. 1, Sec. 8, cl. 12 24

STATUTES:

The Soldiers' and Sailors' Civil Relief Act, 50 U.S.C.A. 574 2

The Buck Act, 4 U.S.C.A. 104-110 16

Conn. Gen. Stat. (Rev. 1958) Sec. 12-408 (1) 9

Conn. Gen. Stat. (Rev. 1958) Sec. 12-408 (2) 21

Conn. Gen. Stat. (Rev. 1958) Sec. 12-407 (2) 10

Conn. Gen. Stat. (Rev. 1958) Sec. 12-431 20

Conn. Gen. Stat. (Rev. 1958) Sec. 12-411 20

Conn. Gen. Stat. (Rev. 1958) c. 214 21

Conn. Gen. Stat. (Rev. 1958) c. 221 21

Conn. Gen. Stat. (Rev. 1958) Sec. 42A-2-401 (3) 11

Subversive Activities Control Act of 1950, Sec. 5 (a) (1) (d) 25

MISCELLANEOUS:

Senate Report No. 1558, 77th Cong. 2d Sess. p. 2. (1942) 18

Senate Report No. 959, 78th Cong. 2d Sess. 1 (1944) 14

H. R. Report No. 1514, 78th Cong. 2d Sess. 2 (1944) 14

Senate Report No. 2182, 87th Cong. 2d Sess. 2 (1962) 15

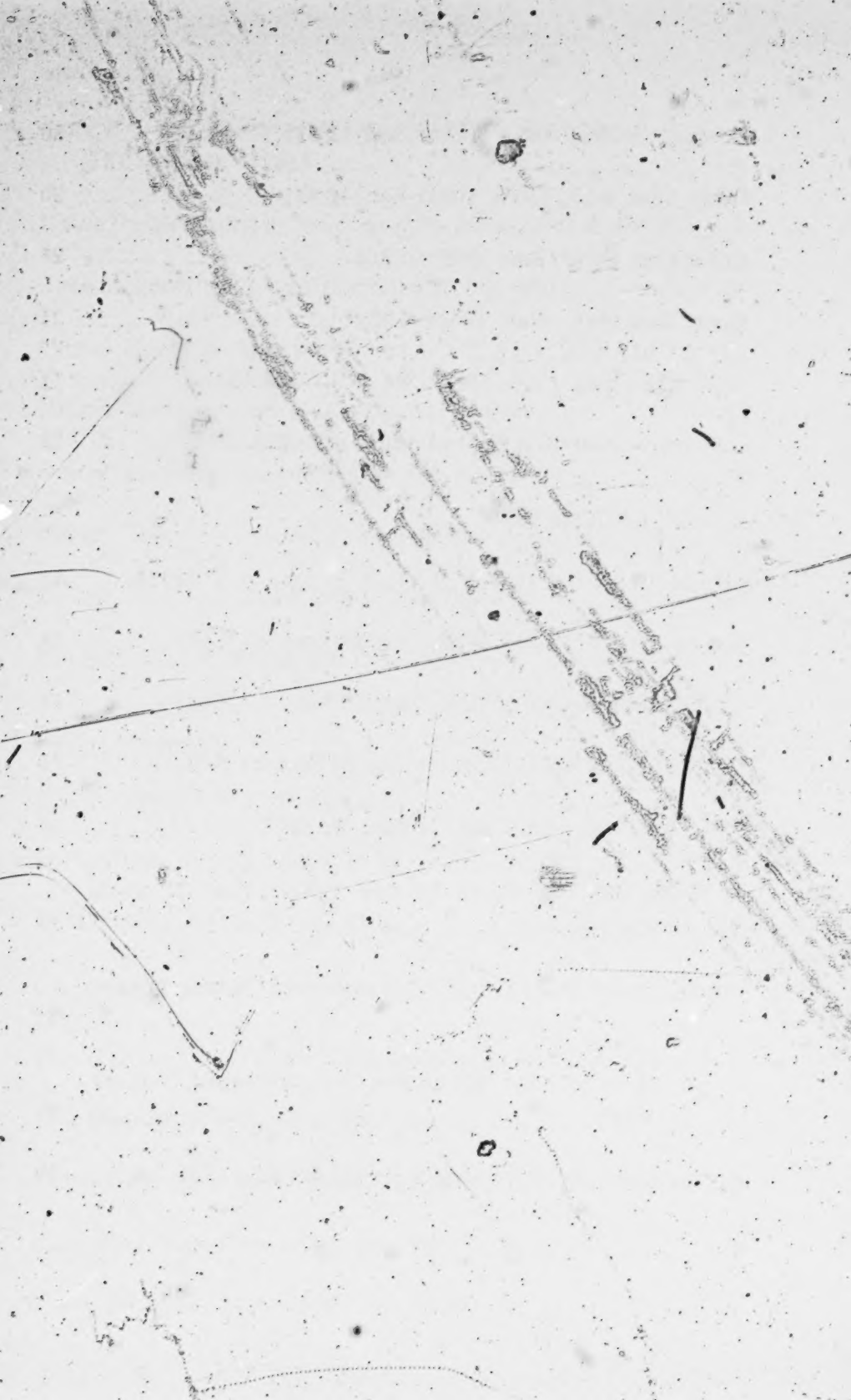
H. R. No. 2126, 87th Cong. 2d Sess. 2 (1962) 15

H. R. No. 565, 89th Cong., 1st Sess (1965), Part III, Table 19-1, p. 610 16

Jacoby, Retail Sales Taxation (Commercial Clearing House) p. 3 13

Conn. Digest of Adm. Rp. to the Gov., 1967-1968, Vol. 22, p. 62-63 20

Sutherlands' Statutory Construction, 3rd Ed., 1943. 19



IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 610

JOHN L. SULLIVAN, Tax Commissioner of the State of Connecticut; GERALD A. LAMB, Treasurer of the State of Connecticut; LOUIS I. GLADSTONE, Comptroller of the State of Connecticut; and ROBERT K. KILLIAN, Attorney General of the State of Connecticut;

Appellants,

v.

UNITED STATES OF AMERICA, ET AL.

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF APPELLANTS

OPINIONS BELOW

The decision appealed from is reported in 398 F. 2d 672 (2nd Cir. 1968) (R. A., 47A). The District Court decision is reported in 270 F. Supp. 236 (1967) (R.A., 28A).

JURISDICTION

The judgment of the Court of Appeals was entered on July 10, 1968 (R. A., 60A). The jurisdictional statement was filed on October 7, 1968, and probable jurisdiction was noted in this case on January 13, 1969 (R.A., 61A).

The jurisdiction of this Court rests upon 28 U.S.C. 1254 (2). *City of Detroit* v. *Murray Corporation of America*, 355 U.S. 489 (1958).

QUESTIONS PRESENTED

(1) Whether the imposition and collection of the Connecticut Sales and Use Taxes on the purchase or use of tangible personal property in Connecticut by nonresident military personnel on active duty stationed outside of their resident or domiciliary state pursuant to military orders contravenes Sec. 514 of the Soldiers' and Sailors' Civil Relief Act.

(2) Whether Section 514 of the Soldiers' and Sailors' Civil Relief Act, as interpreted by the United States Court of Appeals for the Second Circuit, is an unconstitutional infringement upon the reserved power of the states to lay and collect taxes.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

This appeal involves the Tenth Amendment, U.S. Const.:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The Statutes involved are:

Soldiers' and Sailors' Civil Relief Act of 1940, c. 888, 54 Stat. 1178:

> SEC. 514 [as added by Sec. 17, Soldiers' and Sailors' Civil Relief Act Amendments of 1942, c. 581, 56 Stat. 769; and as amended by Sec. 1, Act of July 3, 1944, c. 397, 58 Stat. 722; and Act of October 9, 1962, P.L. 87-771, 76 Stat. 768].
>
> (1) For the purposes of taxation in respect of any person, or of his *personal* property, income, or gross in-

come, by any State, Territory, possession, or political subdivision of any of the foregoing or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while and solely by reason of being, so absent. For the purposes of taxation in respect of the *personal property*, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, *and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district.* [Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders:] *Provided, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political sub-division of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has*

jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to *October 6, 1942.*

(2) *When used in this section, (a) the term "personal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.*

(50 U.S.C. App., Sec. 574).

* The italicized portions of Section 514 were added in 1944. The portion in brackets was added in 1962. Otherwise the Section is as it stood in 1942.

The Education, Welfare and Public Health Tax Act (commonly known and hereinafter referred to as the Connecticut Sales and Use Tax Act). Conn. Gen. Stat. (Rev. 1958) c. 219, Sec. 12-406-12-432 (a), appended herein (A. A., 2B-43B)

STATEMENT OF THE CASE

Suit was instituted in the United States District Court for the District of Connecticut by the United States of America and Lieutenant Stanley D. Schuman, U.S.N., against various officials of the State of Connecticut to determine whether imposition and collection of the Connecticut Sales and Use Tax contravened Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 as amended. 50 U.S.C. App. Sec. 574.

Federal jurisdiction for the United States of America as a party plaintiff is based on 28 U.S.C. Sec. 1345. The District Court

dismissed Lieutenant Schuman's claim for lack of jurisdiction, from which no appeal was taken.

The District Court awarded summary judgment to the United States but by amendment to its judgment stipulated to by the parties Connecticut was permitted, subject to refund, to continue to collect the disputed taxes pending the ultimate determination of the case on appeal.

This decision was affirmed by the United States Court of Appeals for the Second Circuit and judgment rendered on July 10, 1968. Notice of Appeal was filed in the United States Court of Appeals for the Second Circuit on July 30, 1968. The case was docketed on October 7, 1968 and this Court noted probable jurisdiction on January 13, 1969.

The parties to this action have stipulated that servicemen in Connecticut make most of their day-to-day purchases of tangible personal property, which include food, clothing, toilet articles and other personal items, from military exchanges and commissaries operated by the armed services on military installations and are not subject to any tax under the Sales and Use Tax Act. (R.A., 16A)

The issue in this case is principally concerned with the imposition of sales or use taxes on the purchase or use of large items such as motorboats and cars purchased by servicemen from retailers and private individuals.

In the District Court, the United States offered some examples of the imposition of Sales and Use taxes on naval personnel domiciled in other jurisdictions but stationed in Connecticut. Lieutenant Stanley D. Schuman of Nebraska and Commander Kent J. Carroll of Michigan both purchased used motorboats in Connecticut from non-dealers. Schuman paid the use tax under protest; Carroll refused to pay. Commander Clyde H. Shaffer of Pennsylvania purchased a new car from a Connecticut

dealer who collected the sales tax. Commander Jerome W. Roloff of Wisconsin bought a used car in Florida, and paid a sales tax there. When he subsequently registered the car in Connecticut, he was required to pay the difference between the Florida Sales tax and the Connecticut use tax. Finally, Commander William L. Foster purchased a new car from a Connecticut dealer paying the Connecticut sales tax, and at the time of Registration in Texas, his home state, he was required to pay a Texas use tax.

SUMMARY OF THE ARGUMENT

Section 514 of the Soldiers' and Sailors' Civil Relief Act entitled "Residence for tax purposes" was designed to protect nonresident servicemen from personal property taxes, income taxes and certain annual motor vehicle taxes. To accomplish this result, the statutory scheme of Section 514 removes the following jurisdictional grounds for the purposes of taxation: residence or domicile and the situs of personal property.

No doubt that part of Connecticut's sales tax imposed on the transfer of occupancy of a motel room is outside the scope of Section 514. The same is true of the tax on the purchase of tangible personal property. The situs for imposition of a sales tax is not the situs of the property but, independently, the situs of the transaction. Section 514 is directed solely and specifically to the situs of the property.

Throughout the legislative history of Section 514, Congress made clear its design was principally to protect nonresident servicemen from income and personal property taxes. As a matter of fact, the specific reason stated for preventing personal property from acquiring a new situs was to insulate the nonresident serviceman from personal property taxes. Nowhere does Congress indicate sales and use taxes were intended to fall within the protection of Section 514.

This conclusion is even more compelling when the results of

including sales and use taxes within the scheme of Section 514 are examined. Absurd and inequitable results follow. A Serviceman stationed outside of his home State could travel throughout the United States and claim immunity from any taxes imposed when purchasing tangible personal property. On the other hand, a serviceman stationed in his home state, travelling with a nonresident serviceman could not claim sales tax immunity anywhere. No Congressional power is valid to support legislation creating these unfair and absurd results. In essence, although the scheme of Section 514 is appropriate when applied to personal property, income taxes and certain annual motor vehicle taxes, it is particularly inappropriate when applied to sales and use taxes.

Courts should require Congress to clearly spell out any grant of immunity from state taxation. Furthermore, in interpreting such an act, it is important to balance the Government's need for the immunity and the corresponding injury to the States.

Connecticut has imposed sales and use taxes on purchases and use of property by nonresident servicemen since 1947 with no perceivable injury to our armed forces in protecting and defending our Nation. On the other hand, including sales and use taxes within the scope of Section 514 would cause immense disruption of fiscal affairs of State Government. A serious revenue loss and administrative chaos are inescapable. For example: in an ordinary purchase the responsibility is thrust upon the retailer to distinguish between servicemen who qualify for immunity and those who do not, and thereafter to retain sufficient proof that the sale was exempt in order to satisfy the State. Needless to say, consumers, retailers and the State government will suffer irreparably.

The 10th Amendment to the United States Constitution reserved to the States all powers not specifically granted to the Federal Government. No power granted to the Federal Government can support Section 514 as interpreted by the Court of Ap-

peals. The "war power" is broad but cannot be used indiscriminately. When balancing the benefit to the Federal Government and the corresponding injury to the States, the conclusion is inescapable that Section 514 as interpreted by the Court of Appeals was enacted without Constitutional authority in direct interference with the powers reserved to the States.

ARGUMENT

I. SECTION 514 OF THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT DOES NOT REMOVE THE JURISDICTIONAL GROUNDS FOR IMPOSITION OF THE CONNECTICUT SALES AND USE TAXES.

Section 514 of the Soldiers' and Sailors' Civil Relief Act (50 U. S. C. App. 1964 ed., Sec. 574) does not grant exemption from taxation. It removes the jurisdictional grounds for certain taxes.

This is apparent when Section 514 is highlighted as follows:

> "For the purposes of taxation in respect of any person, or of *his* personal property . . . such person shall not be deemed to have lost a *residence* or *domicile* in any State . . . or to have become a resident in or resident of any other State,"...
>
> "For the purposes of taxation in respect of the personal property . . . of any such person by any State . . . of which such person is not a resident or in which he is not domiciled . . . personal property shall not be deemed to be *located or present in* or to have a *situs* for taxation in such State." (Emphasis added)

Stated simply, Section 514 removes the following jurisdictional grounds for the purpose of taxing nonresident servicemen:

(1) residence or domicile, and

(2) presence, location or situs of tangible personal property.

It should be noted that the jurisdictional grounds removed by Section 514 are uniquely appropriate to ad valorum taxation of personal property and certain annual taxes on motor vehicles.

This Court stated in *State Board of Assessors* v. *Comptoir National D'Escompte*, 191 U.S. 388, 402 (1903);

> "It may be taken as a general rule of the law of taxation of personal property that such property can only be taxed at the *residence* of the owner, or at such place as it has required a *situs* which will subject it to the taxing power of the State where found." (Emphasis added)

This Court must now decide whether Section 514 has removed the jurisdictional grounds for imposition of the Connecticut Sales and Use Tax on purchases by nonresident servicemen.

The logical starting point leading to a resolution of the issue would appear to be an analysis of the Connecticut Sales and Use Tax Act.

Section 12-408 (1) of the General Statutes of Connecticut imposes the sales tax on the sale of tangible personal property at retail and the transfer of occupancy of a hotel room. There is little doubt that Section 514 does not remove the jurisdictional grounds for the sales tax on the *transfer of occupancy* of a hotel room since the imposition of the tax is not dependent on the residence or domicile of the serviceman nor on the presence, location or situs of tangible personal property. We also note that the number of states imposing sales taxes on services has been increasing each year as revenue needs increase. A chart indicating the extent of sales tax on the purchase of services can be found in H.R. No. 565 89th Cong. 1st Session (1965), Part III, Table 21-1, p. 644. It seems obvious that the jurisdictional grounds for the imposition of the sales tax on purchases of services by nonresident servicemen are not removed by Section 514.

We begin, therefore, with the proposition that the portion of the Connecticut Sales and Use Tax Act imposed on the transfer of occupancy of a hotel room to a nonresident serviceman is valid under Section 514 of the Soldiers' and Sailors' Civil Relief Act notwithstanding the interpretation by the lower Court in the instant case.

We come then to the issue in this case: whether that part of the sales tax imposed on the sales of tangible personal property to nonresident servicemen contravenes Section 514. The Connecticut Sales Tax is imposed on retailers for the privilege of selling tangible personal property at retail. Section 514 clearly does not prohibit the imposition of the sales tax on retailers. We respectfully submit this simple statement readily disposes of the issue before this Court. However, since the Court in *First Agricultural National Bank* v. *State Tax Commissioner*, 393 U.S. 339 (1968) decreed the legal incidence of a similar sales tax was on the purchaser for the purpose of granting governmental immunity, we shall extend our analysis to further demonstrate that, notwithstanding this judicial conclusion, Section 514 does not prohibit imposition of the Connecticut sales tax on purchases by nonresident servicemen.

A sale is defined in Section 12-407(2) of the Connecticut Sales & Use Tax Act as "any transfer of title, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever." In *Avco Mfg. Corp.* v. *Connelly*, 145 Conn. 161, 172, 140A. 2d 479 (1958), the Connecticut Supreme Court held that the imposition of the Connecticut sales tax was governed by the transfer of title.[1] In other words, the taxable incidence is the transfer of title by a retailer for a consideration.

Consequently, the presence, location or situs of tangible per-

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[1]The Connecticut Court placed emphasis on the title aspect to distinguish the Connecticut Sales Tax from the Alabama Sales Tax, which was in issue before this Court in *Alabama* v. *King & Boozer*, 314 U.S. 1, 62 S. Ct. 43, 86 L. Ed. 3 (1941).

sonal property are not the jurisdictional grounds which govern the imposition of the Connecticut sales tax; rather the sales tax is imposed on the transfer of title which can be accomplished irrespective of the presence, location or situs of the tangible personal property. To determine when the transfer of title occurs, both the common law and the State law must be examined. The common law is clearly stated in the following quote from *Briggs* v. *United States*, 143 U.S. 346, 354 (1892): "By the common law, a sale of personal property is complete and title passes as between vendor and vendee when the terms of the transfer are agreed upon without actual delivery." An examination of the Uniform Commercial Code, as adopted by Connecticut, clearly indicates location of the sale can be independent of the location of the property. Sec. 42A-2-401 (3) of the General Statutes of Connecticut provides:

> "(a) if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or (b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting."

For administrative purposes, the Connecticut sales tax is not imposed unless the property is located within the State.

We submit this analysis clearly demonstrates that the jurisdictional grounds referred to in Section 514 are not appropriate as a basis for prohibiting the State of Connecticut from imposing and collecting a sales tax on purchases by nonresident servicemen.

II. THE LEGISLATIVE HISTORY CLEARLY EVIDENCES THAT CONGRESS DID NOT INTEND SECTION 514 TO ENCOMPASS SALES AND USE TAXES.

Section 514 of the Soldiers' and Sailors' Civil Relief Act

was first enacted in 1942.[2] Prior thereto, neither the Soldiers' and Sailors' Civil Relief Act of 1918, 40 Stat. 440, nor the Soldiers' and Sailors' Civil Relief Act of 1940, 54 Stat. 1178, afforded the tax relief granted by Section 514.

Section 514 was amended in 1944 and in 1962. The legislative history of the original enactment and each amendment thereto is examined in detail below to emphasize the Congressional purpose in enacting this legislation.

This Court has regularly considered the legislative history of an enactment in determining Congressional intent. *United States* v. *Zacks*, 375 U.S. 59, 62, 84 S. Ct., 178, 180.

A. 1942 Enactment of Section 514.

Section 514 was enacted originally as follows:

> "(1) For the purposes of taxation in respect of any person, or of his property, income, or gross income, by any State, Territory, possession or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent."[3]

In essence, this section protected a serviceman transferred pursuant to military orders from losing an old residence or

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[2]Sec. 17, the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, c. 581, 56 Stat. 769.
[3]Ibid.

acquiring a new residence or domicile for the purposes of *income* and *property* taxation. Neither the sales tax nor the use tax can be classified as a property tax or an income tax. This Court has affirmed the fact that a sales tax is a privilege tax as distinct from a property tax, *Monamotor Oil Co.* v. *Johnson*, 292 U.S. 86 (1933), and has also distinguished a use tax from a property tax. *Henneford* v. *Silas Mason Co.*, 300 U.S. 577, 582 (1936).

It should, therefore, be readily apparent that Section 514 in no way prohibits the imposition of sales and use taxes. The imposition of a sales tax or a use tax is not based on either residence or domicile.[4]

Accordingly, if Section 514 grants immunity from sales and use taxes, it must be attributed to the subsequent amendments.

B. The 1944 Amendment

In 1944, Section 514 was amended in part by adding the following language:[5]

> ". . . and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district.
>
> "Provided, that nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction.
>
> "(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall

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[4]Sales and use taxes are privilege taxes and are imposed regardless of the residence or domicile of the purchaser or user. *Jacoby, Retail Sales Taxation* (Commerce Clearing House) p. 3 (1938).

[5]Sec. 1, Act of July 3, 1944, c. 307, 58 Stat. 722.

include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, that the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

This amendment was a clarifying amendment and the legislative reports indicate that Congress had intended the original 1942 act to prohibit ad valorem personal property taxes as well as income taxes.[6] However, the mere reference to residence and domicile had not prevented some states from imposing personal property taxes on property of nonresident servicemen on the basis that such property had acquired a taxable situs in the taxing State. Therefore, the 1944 amendment was proposed to insure that servicemen were immunized from ad valorem personal property taxes as well as income taxes.

While this is only a summary of the legislative history of the 1944 amendment, the explicit texts of the Senate and House reports leave little doubt that the 1944 amendment was directed to personal property taxes. The explanatory language was not directly solely to the amendments to Sec. 1 of the Act, but to the entire Act, including Section 2. We submit that Section 2(b) should be interpreted accordingly. The licenses, fees and excises imposed in respect to motor vehicles are those imposed annually thereby creating a burden similar to that of personal property taxes. Just as we have demonstrated that the purpose of the 1942 enactment was not to prohibit sales and use taxes, we submit that the purpose of the 1944 amendment was not intended to prohibit the imposition of sales and use taxes.

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[6] S. Rep. No. 959 78th Cong. 2d sess. 1 (1944) (A.A., 43B); H. R. No. 1514, 78th Cong. 2d sess. 2 (1944), (A.A., 52B).

C. The 1962 Amendment

In 1962 Congress added the following language to Section 514:[7]

> "Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders."

Again, the 1962 Congressional reports[8] clearly indicate the purpose of this amendment. The event giving rise to this amendment was the assessment by a Virginia County of ad valorem taxes on the personal property of a nonresident serviceman left behind with his family when he was transferred to sea duty.[9] In order to provide immunity in this situation, the 1962 amendment extends protection to a serviceman's property as long as the serviceman is absent from his home pursuant to military orders regardless of whether he is stationed in the particular taxing jurisdiction.

Again, this change was characterized as a clarifying amendment to cover a particular factual situation. It certainly was not intended to enlarge the scope of Section 514 to embrace sales and use taxes.

D. Legislative Reports Silent as to Sales and Use Taxes.

Although each legislative enactment dealing with Section 514 is accompanied by legislative reports, not a single mention

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[7]Act of October 9, 1962, P. L. 87-771, 76 Stat. 768.
[8]S. Rep. No. 2182, 87th Cong. 2d Sess. 1 (1962) (A.A., 59B); H. R. No. 2126, 87th Cong. 2d Sess. 2 (1962).
[9]*United States* v. *Arlington County*, 326 F 2d 929 (4th Cir. 1964).

of sales and use taxes can be found. However, there is no doubt that Congress well recognized *sales and use taxation* as a distinct form, for it specifically provided in the *Buck Act of 1940*, 54 Statute 1059, 4 U.S.C.A. 104-110, *that sales and use taxes* could be imposed in a federal area. It is interesting and pertinent to note that both the Buck Act and the Soldiers' and Sailors' Civil Relief Act of 1940 were passed by the same session of Congress. Further, at the time of the 1944 amendment to the Soldiers' and Sailors' Civil Relief Act, 23 States had sales taxes in force and 19 had use taxes in force.[10]

By itself, the silence of Congress as to sales and use taxes may not be particularly persuasive. It becomes meaningful, however, when considered in the light of the above analysis of the Connecticut Sales and Use Tax Act and the legislative history of Section 514 of the Soldiers' and Sailors' Civil Relief Act.

III. THIS IS A CASE OF FIRST IMPRESSION.

Cases interpreting Section 514 of the Act are few. The principal cases interpreting Section 514 and the major cases relied upon by the Court of Appeals in arriving at its decision are *Dameron* v. *Brodhead*, 345 U.S. 322, (1953) and *California* v. *Buzard*, 382 U.S. 386 (1966). These cases are readily distinguished from the instant case since the imposition of sales and use taxation was not in issue in either of the cited cases.

In *Dameron* v. *Brodhead*, the issue did not involve a sales or use tax. This Court simply decided that under Section 514 a *personal property tax* could not be imposed on a nonresident serviceman by the State of military station irrespective of whether the domiciliary state imposed a similar tax on that property.

In *California* v. *Buzard*, the issue was a criminal violation resulting from the use of his automobile by Buzard on the high-

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[10]H. R. No. 565, 89th Cong. 1st Sess. (1965), Part III, Table 19-1, p. 610.

ways after his refusal to pay an *annual license fee* on the automobile, *which fee was specially enacted to replace local ad valorem taxation* of automobiles in California.[11] The California sales and use tax act was not in issue before this Court.[12]

Both the decision in the District Court and the decision in the Court of Appeals in the instant case place great emphasis on the language of this Court in the *Buzard* case which states, "The very purpose of Section 514 in broadly freeing the nonresident serviceman from the obligation to pay property and income taxes was to relieve him of the burden of supporting the governments of the States where he was present solely in compliance with military orders."[13]

Although the above quotation may be this Court's view of the philosophy behind the adoption of Section 514, we submit it cannot be used to extend the effect of Section 514 beyond its express terms.

We further submit that the Court of Appeals erroneously cited the above-quoted language as authority for exempting nonresident servicemen from the imposition of Connecticut sales and use taxes on their purchases and use of personal property. (R.A., 58A).

For example, it is beyond dispute that a serviceman, resident or nonresident, owning real property, is liable for the payment of real property taxes.[14] Nor can it be disputed that the revenue from real property taxes is used to support the taxing governmental body. The statement from *Buzard* could not be cited as authority for extending the scope of Section 514 to include real property taxes.

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[11]*California* v. *Buzard*, Supra, 395, footnote 9. (1966)
[12]California Revenue and Taxation Code (1939) Secs. 6001-7154.
[13]*California* v. *Buzard*, Supra, 393.
[14] Sec. 514 refers only to taxes with respect to personal property. Real property taxes are permissible but the property cannot be sold for taxes while the owner is serving in the Armed Forces. 50 U. S. C. App. Sec. 560.

We submit that, correspondingly, the language cannot be used to extend the scope of Section 514 to include sales or use taxes. Since this Court has never had the opportunity to consider whether Section 514 extends to nonresident servicemen immunity from sales and use taxes, we suggest the proper approach to a resolution of the issue is an examination of Section 514 and its legislative history.

IV. SECTION 514 SHOULD NOT BE LIBERALLY CONSTRUED HEREIN.

In support of a liberal construction of Section 514 the United States has cited in the lower court the case of *LeMaistre* v. *Leffers*, 333 U.S. 1, 6 (1948) and Senate Rep. No. 1558, 77th Congress 2nd session, p. 2.

Neither *LeMaistre* nor the Senate Report made specific reference to immunity from taxation by the states. *LeMaistre* dealt with the right to redeem property after a tax sale. The statement as to liberal construction in Senate Report 1558 was in reference to the coverage of civilians suffering from hardship as a result of the military service of another.[15]

The State of Connecticut, on the other hand, claims there is abundant case law in support of a strict construction of any statutory or constitutional provision under which immunity or exemption from state taxation is claimed. *Oklahoma Tax Comm.* v. *United States*, 319 U.S. 598, 604 (1943); *Graves* v. *New York ex rel. O'Keefe*, 306 U.S. 466, 480 (1939); *Hale* v. *Iowa State Board of Assessors and Review*, 302 U.S. 95, 103 (1937).

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[15]The entire paragraph in which the language appears is as follows:

"In a few instances persons other than persons in the military service are granted relief from hardship attributable to the military service of another person. Such relief is incidental and is in accord with the main purpose of the bill. Any doubts that arise from the scope and application of the act should be resolved in favor of the person in military service involved."

S. Rep. No. 1558, 77th Cong., 2d Sess. p. 2.

In *Hale* v. *Iowa Board of Assessors and Review*, supra, 103, this Court stated explicitly:

> "Grants of immunity from taxation in derogation of the sovereign power of the State are strictly construed."

We arrive at the point then where the United States seeks a liberal construction of the Act while the State of Connecticut seeks a strict construction. We submit that neither may be the answer.

When the balance of federalism and the right of a state to tax is in issue, the court should be wary of labels. The construction of Section 514 should not rest on the Court choosing between the authorities cited by the appellee for a liberal construction and those cited by the appellant for a strict construction. Determining the extent of federal interference with the State's right to tax is far too basic to be governed by labels, for it requires a careful balance of the injury to the state and the necessity of the federal government. *Union Pacific Railway Company* v. *Peniston*, 18 Wall 5, 30. (1873).

This is not to say this court should legislate this balance. Rules of statutory construction do not exist in vacuum but are based on reason, logic and law.[16] They are guides for the court in construing doubtful statutes. Balancing the injury to the states and the necessity of the federal government is simply suggested as a proper guide for construing the statutory provisions herein before this court.

The parties have stipulated that most of the daily necessities of servicemen are purchased at tax free exchanges on military installations. (R.A., 16A). If servicemen choose to buy items from

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[16]"No single canon of interpretation can purport to give a certain and unerring answer to the question. The question of meaning lies deeper than the law." Horack, Sutherland's Statutory Construction, 3rd Ed. (Callahan and Company) 1943.

Connecticut retailers, they pay a 3½% sales tax; Conn. Gen. Stat., (Rev. 1958) Sec. 12-408 (1), A.A., 9B) or for boats, cars, and airplanes a 3½% on the casual sale if the purchase is from other than a retailer, Conn. Gen. Stat. (Rev. 1958) 12-431, (A.A., 42B) or if an item was purchased outside the state from a retailer for use in Connecticut a 3½% tax on the use. Conn. Gen. Stat., (Rev. 1958) 12-411 (A.A., 14B).

It does not appear that the taxes here in issue have inhibited the federal government or interfered with its defense of our country. It should be emphasized that the Connecticut Sales and Use Tax Act has been in effect since 1947.[17] No objection to its payment by nonresident servicemen was raised until the inception of this suit. Although we are precluded from claiming laches against the United States,[18] we can certainly cite the period of 20 years as clear and convincing proof that the imposition and collection of Connecticut Sales and Use Taxes has in no way interfered with the defense of our nation.

On the other hand, affirmance of the Decision of the Court of Appeals will have disastrous effects on Connecticut as well as all other states imposing sales and use taxes. Sales and use taxes are the principal source of revenue for Connecticut[19] for support of its program in the areas of education, welfare and public health. Although the lower court decision removes only a small segment of taxpayers from its purview, it will thoroughly disrupt the entire system of taxation. Retailers responsible for collection and payment of the tax must not only satisfy themselves that the purchaser is a serviceman stationed outside his domicile and on active duty, but they must further retain sufficient proof

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[17] P. A. No. 228, 1947 Session, Connecticut General Assembly; Conn. Gen. Stat. (1947 Supp.) c. 78 (a), Sections 328 (i)-353 i.

[18] *Costello v. United States*, 365 U.S. 265, 281 (1961).

[19] 35.2% of Connecticut's tax revenue for the fiscal year ending June 30, 1968 was derived from the sales and use tax. Conn. Digest of Adm. Rp. to the Gov., 1967-1968 Vol. 22, p. 62-63.

to satisfy the State of Connecticut that the sale was free from tax.[20]

Imagine the impossible task of a retailer faced with the necessity of distinguishing which of the following servicemen can purchase tax free:

(1) One stationed in Connecticut and domiciled in Massachusetts;

(2) One stationed in Rhode Island and domiciled in Massachusetts;

(3) One stationed in New York and domiciled in New York;

(4) One stationed in Connecticut, originally from New York but who voluntarily changed his domicile to Connecticut.

Furthermore, the retailer must not only identify the status of the serviceman, but must also establish that the purchase is not for a trade or business and not for the benefit of another. Now imagine the task of the State Tax Department in auditing the retailer to verify these tax free sales. The possibilities are staggering. States, retailers and consumers will suffer.

Unfortunately, the detrimental effects to Connecticut and the other states do not end there. Since the lower Court's decision was partially based on the language of Section 514 (1) "taxation in respect of . . . personal property", the decision may afford immunity to nonresident servicemen from the State's cigarette tax upon the purchase of cigarettes,[21] and the State's gasoline tax upon the purchase of gasoline.[22] Since these taxes

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[20]Conn. Gen. Stat., (Rev. 1958) Sec. 12-408 (2), (A.A.,9B).
[21]Conn. Gen. Stat. (Rev. 1958) c. 214.
[22]Conn. Gen. Stat. (Rev. 1958) c. 221.

are built into the purchase price, their administration would be made chaotic.

An alternative suggestion whereby this Court could avoid labels in the highly sensitive area of intergovernmental tax immunity would be by embracing its holding in the case of *United States* v. *City of Detroit*, 355 U.S. 466, 474 as follows:

> "Wise and flexible adjustment of intergovernmental tax immunity calls for political and economic considerations of the greatest difficulty and delicacy. Such complex problems are ones which Congress is best qualified to resolve."

This Court evidently took this posture as recently as its 1968 decision in *Agricultural National Bank* v. *State Tax Commission*, supra, to the effect that if any change in the taxation of national banks is to be made it must come from Congress.

V. THE DECISION OF THE LOWER COURT HOLDING THAT SALES AND USE TAXES COME WITHIN THE SCOPE OF SECTION 514 PRODUCES UNJUST AND ABSURD RESULTS.

It is a well settled rule of law that statutes should be interpreted to avoid unjust and absurd results. *United States* v. *Bryan*, 339 U.S. 323, 338 (1949); *United States* v. *Katz*, 271 U.S. 354, 357 (1926); *United States* v. *Oregon & Railroad*, 164 U.S. 526, 539 (1896); *In re Chapman, Petitioner*, 166 U.S. 661, 667 (1897).

The scheme of Section 514 in benefiting servicemen is inappropriate to embrace sales and use tax protection. Thus interpreted by the lower Court, it will produce innumerable bizzare and unreasonable results. Examples of injustice are limited only

by the imagination, however the following are cited to emphasize this point:

A. Two servicemen are stationed in Connecticut. One is domiciled in Connecticut the other in California. Being stationed outside of his domicile, the Californian is free from sales and use taxes everywhere except California. The Connecticut resident is not immune anywhere.

If they each purchase pleasure craft in Connecticut, the Connecticut resident would pay the sales tax whereas the Californian would be immune. Although this result is difficult to justify, the next situation is even more bizarre.

On weekend leave these two servicemen take a trip through New England. They each purchase meals in restaurants, sleeping bags and other incidental items. The Californian is free from paying sales tax on these purchases while the Connecticut resident is liable.

B. The same two servicemen visit the home of the Californian. While in California, they both are liable for sales and use taxes. However, as soon as they cross the border into Arizona or Nevada, the Californian is immune from tax but the Connecticut resident must pay sales tax.

The absurdity of these results is apparent. Rather than aiding the United States in waging war, the inclusion of sales and use taxes within the immunity of Section 514 would hinder the governmental effort. As we see the absurdities, so will the servicemen to their utter confusion.

Congress stated that the Soldiers' and Sailors' Civil Relief Act was designed to maintain and protect the morale . . . of our armed forces." H. Rep. No. 2198, 77th Cong. 2d Sess.; p. 2. Including sales and use taxes within the scope of Section 514 would serve to undermine this very purpose.

These absurd examples are greatly increased if the decision effectively forbids States from imposing cigarette taxes and gasoline taxes. The resulting administrative problems arising in each of the 50 states imposing any or all of these taxes are incalculable, insoluble and catastrophic. The resulting adminstrative costs to the taxpayers of the States will be staggering and all out of proportion to the limited benefits derived by the United States or the servicemen themselves.

Additionally, the question of whether the immunity extends to purchases of tangible personal property by wives and children of nonresident servicemen leads to further ramifications and compounds the administrative difficulties to an enormous degree.

In sum, the scheme and scope of Section 514 is particularly appropriate to income taxes, personal property taxes, and annual motor vehicle taxes, and particularly inappropriate when applied to sales and use taxes.

VI. AS INTERPRETED BY THE COURT OF APPEALS, SECTION 514 IS AN UNCONSTITUTIONAL INFRINGEMENT ON THE RESERVED POWER OF THE STATE TO LAY AND COLLECT TAXES.

The issue of constitutionality of Section 514 of the Act was placed before this Court in *Dameron* v. *Brodhead*, supra.

In that case, Brodhead alleged Section 514 was unconstitutional on the ground that it infringed on the reserved power of the States to lay taxes. U. S. Const., Amendment X.

This Court, with Justice Black and Justice Douglas dissenting, held that Section 514 was constitutional, since this statute was a necessary and proper implementation of the power "to declare war", U.S. Const. Art. 1, Sec. 8, cl. 11, and the power "to raise and support armies." Ibid., cl. 12. Significantly, this Court continued, "What has been said in no way affects the reserved

power of the states to tax. For this statute merely states that the taxable domicile of servicemen shall not be changed by military assignments." *Dameron* v. *Brodhead*, supra, 325.

The decision of the Court of Appeals herein has so broadened the interpretation of Section 514 as to render the above statement of this Court a nullity. It would appear from the Court of Appeals' rationale that any tax which is ultimately passed on to the non-resident serviceman in connection with the sale of tangible personal property falls within the immunity of Section 514.

Accordingly, Connecticut and most other states are now faced with the specter of granting to nonresident servicemen immunity not only from sales and use taxes, but also taxes imposed on their purchases of cigarettes and gasoline. Thus interpreted, we submit, Section 514 is unconstitutional.

The power of Congress to prepare for and wage war is undoubtedly broad in scope. Nevertheless, this Court recently clearly indicated that such power has limits.

In United States v. *Robel*, 398 U.S. 258, (1967) Sec. 5 (a) (1) (d) of the Subversive Activites Control Act of 1950 was alleged unconstitutional inasmuch as it rendered it illegal for a member of a subversive association to be employed in a defense plant. This, it was alleged, interfered with the basic guarantee of freedom of association. The United States argued the Act was a proper exercise of the war power. This Court held that section of the Act unconstitutional and stated:

> "However, the phrase 'war power' cannot be invoked as a talismanic incantation to support any exercise of congressional power which can be brought within its ambit."

Taxation by the States is essential to their very existence, and states are essential to the existence of our nation. *Lane County* v. *Oregon*, 7 Wall 71, 76. The Federal Government cannot

act to prevent state taxation unless it clearly demonstrates that the tax interferes with the performance of a federal function. *Union Pacific Railway Company* v. *Peniston*, supra.

Permitting a state tax on the property of a federally-created railroad corporation, the Court stated in *Union Pacific Railway Company* v. *Peniston*, supra:

> (p. 29) "That the taxing power of a state is one of its attributes of sovereignty; that it exists independently of the Constitution of the United States, and underived from that instrument; and that it may be exercised to an unlimited extent upon all property, trades, business, and avocations existing or carried on within the territorial boundaries of the state, except so far as it has been surrendered to the Federal Government, either expressly or by necessary implication, are propositions that have often been asserted by this court. And in thus acknowledging the extent of the power to tax belonging to the states, we have declared that it is indispensable to their continued existence. * * *

> (p. 30-31) "It cannot be that a state tax which remotely affects the efficient exercise of a Federal power is for that reason alone inhibited by the Constitution. To hold that would be to deny to the states all power to tax persons or property. Every tax levied by a state withdraws from the reach of Federal taxation a portion of the property from which it is taken, and to that extent diminishes the subject upon which the Federal taxes may be laid. The states are, and they must ever be, coexistent with the National Government. Neither may destroy the other. Hence the Federal Constitution must receive a practical construction. Its limitations and its implied prohibitions must not be extended so far as to destroy the necessary powers of the states, or prevent their efficient exercise. * * *.

We submit that the imposition of sales and use taxes on the

purchases of personal property by servicemen is within the realm of the private affairs of such servicemen so as to cause no interference with the function of the servicemen in serving and defending our Nation. The words of Justice Douglas in his dissent in *Dameron* v. *Brodhead*, supra, 329, ring even more true in this case:

> "The private affairs of our military . . . the furniture they purchase . . . by the very definition are not in the federal public domain. When Congress undertakes to protect them from state taxation or regulation, it is not acting to protect either a federal instrumentality or any function which a federal agency performs."

Accordingly, we respectfully submit Section 514 as interpreted by the Court of Appeals is an unconstitutional infringement on the power of the States to levy and collect taxes.

CONCLUSION

For the reasons set out above, it is respectfully submitted that Section 514 of the Soldiers' and Sailors' Civil Relief Act does not immunize nonresident servicemen from the Connecticut Sales and Use Tax and, therefore, the decisions of the Courts below should be reversed.

Respectfully submitted,

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APPELLANTS' APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 610

JOHN L. SULLIVAN, Tax Commissioner of the State of Connecticut; GERALD A. LAMB, Treasurer of the State of Connecticut; LOUIS I. GLADSTONE, Comptroller of the State of Connecticut; and ROBERT K. KILLIAN, Attorney General of the State of Connecticut;

Appellants,

v.

UNITED STATES OF AMERICA, ET AL.

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

EDUCATION, WELFARE AND PUBLIC HEALTH TAX ACT (REV. 1958) AS AMENDED.

SEC. 12-406. Title. This chapter is known and shall be cited as the "Education, Welfare and Public Health Tax Act."

SEC. 12-407. Definitions. Whenever used in this chapter:

(1) "Person" means and includes any individual, firm, co-partnership, joint venture, association of persons however formed, social club, fraternal organization, corporation, estate, trust, fiduciary receiver, trustee, syndicate, the United States, this state or any political subdivision thereof or any group or combination acting as a unit, and any other individual or officer acting under the authority of any court in this state.

(2) "Sale" and "selling" mean and include: (a) Any transfer of title, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration; (b) any withdrawal, except a withdrawal pursuant to a transaction in foreign or interstate commerce, of tangible personal property from the place where it is located for delivery to a point in this state for the purpose of the transfer of title, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of the property for a consideration; (c) the producing, fabricating, processing, printing or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing or imprinting; (d) the furnishing and distributing of tangible personal property for a consideration by social clubs and fraternal organizations to their members or others; (e) the furnishing, preparing, or serving for a consideration of food, meals or drinks; (f) a transaction whereby the possession of property is transferred but the seller retains the title as security for the pay-

ment of the price; (g) a transfer for a consideration of the title of tangible personal property which has been produced, fabricated or printed to the special order of the customer, or of an original visualization or design where the intrinsic value lies in the manual skill and imagination of the maker thereof and which is not produced by the maker for public exhibition; (h) a transfer for a consideration of the occupancy of any room or rooms in a hotel or lodging house for a period of thirty consecutive calendar days or less.

(3) "Retail sale" or "sale at retail" means and includes a sale for any purpose other than resale in the regular course of business of tangible personal property or a transfer for a consideration of the occupancy of any room or rooms in a hotel or lodging house for a period of thirty consecutive calendar days or less. The delivery in this state of tangible personal property by an owner or former owner thereof or by a factor, if the delivery is to a consumer pursuant to a retail sale made by a retailer not engaged in business in this state, is a retail sale in this state by the person making the delivery. He shall include the retail selling price of the property in his gross receipts.

(4) "Storage" includes any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a retailer.

(5) "Use" includes the exercise of any right or power over tangible personal property incident to the ownership of that property, except that it does not include the sale of that property in the regular course of business.

(6) "Storage" and "use" do not include keeping, retaining or exercising any right or power over tangible personal property shipped or brought into this state for the purpose of subsequently transporting it outside the state for use there-

after solely outside the state, or for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.

(7) "Purchase" means and includes: (a) Any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property or of the occupancy of any room or rooms in a hotel or lodging house for a period of thirty consecutive calendar days or less for a consideration; (b) a transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price; (c) a transfer for a consideration of tangible personal property which has been produced, fabricated or printed to the special order of the customer, or of any publication, except tangible personal property consisting of an original visualization or design where the intrinsic value lies in the manual skill and imagination of the maker thereof and which is not produced by the maker for public exhibition.

(8) "Sales price" means the total amount for which tangible personal property is sold or the total amount of rent received for occupancy, valued in money whether paid in money or otherwise, without any deduction on account of any of the following: (a) The cost of the property sold; (b) the cost of materials used, labor or service cost, interest charged, losses or any other expenses; (c) the cost of transportation of the property prior to its purchase. The total amount for which the property is sold or the total amount of rent received for occupancy includes all of the following: (a) Any services that are a part of the sale; (b) any amount for which credit is given to the purchaser by the seller. "Sales price" does not include any of the following: (a) Cash discounts allowed and taken on sales; (b) the amount charged for property returned by customers upon rescission of the contract of sale when the

entire amount charged therefor is refunded either in cash or credit, and when the property is returned within ninety days from the date of purchase; (c) the amount charged for labor or services rendered in installing or applying the property sold; (d) the amount of any tax, not including any manufacturers' or importers' excise tax, imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer; (e) transportation charges separately stated, if the transportation occurs after the purchase of the property is made.

(9) "Gross receipts" means the total amount of the sales price, of the retail sales of retailers or the total amount of the rent received for occupancy, valued in money, whether received in money or otherwise, without any deduction on account of any of the following: (a) The cost of the property sold. However, in accordance with such regulations as the tax commissioner may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property; (b) the cost of the materials used, labor or service cost, interest paid, losses or any other expense; (c) the cost of transportation of the property prior to its sale to the purchaser. The total amount of the sales price includes all of the following: (a) Any services that are a part of the sale; (b) all receipts, cash, credits and property of any kind; (c) any amount for which credit is allowed by the seller to the purchaser. "Gross receipts" do not include any of the following: (a) Cash discounts allowed and taken on sales; (b) sales price of property returned by customers upon rescission

of the contract of sale when the full sales price is refunded either in cash or credit, and when the property is returned within ninety days from the date of sale; (c) the price received for labor or services used in installing or applying the property sold; (d) the amount of any tax, not including any manufacturers' or importers' excise tax, imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer; (e) transportation charges separately stated, if the transportation occurs after the sale of the property is made to the purchaser.

(10) "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit or advantage, either direct or indirect.

(11) "Seller" includes every person engaged in the business of selling tangible personal property the gross receipts from the retail sale of which are required to be included in the measure of the sales tax and every operator as defined in subsection (18) of this section.

(12) "Retailer" includes: (a) Every person engaged in the business of making sales at retail or in the business of making retail sales at auction of tangible personal property owned by the person or others; (b) every person engaged in the business of making sales for storage, use or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use or other consumption; (c) every operator as defined in subsection (18) of this section; (d) every person soliciting orders within this state by means of mail order catalogs or other advertising circulars who, by reason thereof receives and accepts orders either within or without the state from the general public in this state for the sale and delivery of goods customarily sold in retail business establishments; (e) when in the opinion of the tax commissioner it is necessary for the efficient administration of this chapter to regard

salesman, representative, peddler or canvasser as the agent of the dealer, distributor, supervisor or employer under whom he operates or from whom he obtains the tangible personal property sold by him, the tax commissioner may, in his discretion, treat and regard such agent as the retailer jointly responsible with his principal, employer or supervisor for the collection and payment of the tax imposed by this chapter.

(13) "Tangible personal property" means personal property which may be seen, weighed, measured, felt or touched or which is in any other manner perceptible to the senses.

(14) "In this state" or "in the state" means within the exterior limits of the state of Connecticut and includes all territory within these limits owned by or ceded to the United States of America.

(15) "Engaged in business in the state" means selling in this state, tangible personal property for use, storage or consumption within the state or engaging in the transfer for a consideration of the occupancy of any room or rooms in a hotel or lodging house for a period of thirty consecutive calendar days or less. The term shall include but shall not be limited to the following acts or methods of transacting business: (a) Maintaining, occupying or using, permanently or temporarily, directly or indirectly, through a subsidiary or agent, by whatever name called, of any office, place of distribution, sales or sample room or place, warehouse or storage point or other place of business and (b) having any representative, agent, salesman, canvasser or solicitor operating in this state for the purpose of selling, delivering or taking orders of tangible personal property.

(16) "Hotel" means any buildings regularly used and kept open as such for the feeding and lodging of guests where any person who conducts himself properly and who is able and ready to pay for such services is received if there are ac-

commodations for him and which derives the major portion of its operating receipts from the renting of rooms and the sale of food. "Hotel" shall include any apartment hotel wherein apartments are rented for fixed periods of time, furnished or unfurnished, while the keeper of such hotel supplies food to the occupants thereof, if required. (17) "Lodging house" means any building or portion of a building, other than a hotel or apartment hotel, in which persons are lodged for hire with or without meals, including, but not limited to, any motel, motor court, motor inn, tourist court or similar accommodation; provided the terms "hotel", "apartment hotel" and "lodging house" shall not be construed to include: (a) Privately owned and operated convalescent homes, homes for the aged, infirm, indigent or chronically ill; (b) religious or charitable homes for the aged, infirm, indigent or chronically ill; (c) privately owned and operated summer camps for children; (d) summer camps for children operated by religious or charitable organizations, or (e) lodging accommodations at educational institutions. (18) "Operator" means any person operating a hotel or lodging house in the state, including, but not limited to, the owner or proprietor of such premises, lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such hotel or lodging house. (19) "Occupancy" means the use or possession, or the right to the use or possession, of any room or rooms in a hotel or lodging house, or the right to the use or possession of the furnishings or the services and accommodations accompanying the use and possession of such room or rooms, for a period of thirty consecutive calendar days or less. (20) "Room" means any room or rooms of any kind in any part or portion of a hotel or lodging house let out for use or possession for lodging purposes. (21) "Rent" means the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also any amount for which credit is allowed by the operator

to the occupant, without any deduction therefrom whatsoever. ever.

SEC. 12-408. *The sales tax.* (1) *Imposition and rate.* For the privilege of selling tangible personal property at retail, or of transferring occupancy of any room or rooms in a hotel or lodging house in this state for a consideration, a tax is hereby imposed on all retailers at the rate of three and one-half per cent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail or, with respect to each such transfer of occupancy, from the total amount of rent received for such occupancy of any room or rooms in a hotel or lodging house for the first period of not exceeding thirty consecutive calendar days, except that a rate of one and three-quarters per cent of such gross receipts on all sales of fourteen cents or less is hereby imposed in lieu of said rate of three and one-half per cent, provided the retailer making such sales shall keep records thereof acceptable to the tax commissioner. Upon his failure to keep such records, said rate of three and one-half per cent shall apply to all such sales. An amount equal to ten per cent of the gross revenue from the tax imposed on transfers of occupancy by this section for the last-preceding fiscal year is appropriated to the state development commission and shall be used by said commission for the promotion and development of the recreation industry of Connecticut, including, but not limited to, the vacation, travel, hotel, motel and restaurant businesses in this state. Said ten per cent thus appropriated may be used for the purchase of advertising and for the production and distribution of printed literature designed to promote greater vacation travel into the state. Not more than ten per cent of such appropriations shall be devoted to administrative costs including personnel.

(2) *Reimbursement.* Reimbursement for the tax hereby imposed shall be collected by the retailer from the consumer and such tax reimbursement, termed "tax" in this and

the following subsections, shall be paid by the consumer to the retailer and each retailer shall collect from the consumer the full amount of the tax imposed by this chapter or an amount equal as nearly as possible or practicable to the average equivalent thereof. Such tax shall be a debt from the consumer to the retailer, when so added to the original sales price, and shall be recoverable at law in the same manner as other debts except as provided in section 12-432a.

(3) *Bracket system for adding and collecting tax.* For the purpose of adding and collecting the tax imposed by this chapter, or an amount equal as nearly as possible or practicable to the average equivalent thereof, by the retailer from the consumer the following bracket system shall be in force and effect as follows:

Amount of Sale	Amount of Tax
$0.01 to $0.14 inclusive	No Tax
.15 to .38 inclusive	1¢
.39 to .64 inclusive	2¢
.65 to .88 inclusive	3¢
.89 to 1.18 inclusive	4¢
1.19 to 1.57 inclusive	5¢
1.58 to 1.85 inclusive	6¢
1.86 to 2.14 inclusive	7¢

On all sales above $2.14, the tax shall be computed at the rate of three and one-half per cent.

(4) *Unlawful advertising.* No retailer shall advertise or hold out or state to the public or to any consumer, directly or indirectly that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the sales price of the property sold or that, if added, it or any part thereof will be refunded. Under the provisions of this section, however, a retailer may advertise the sale of tangible personal property by any of the following methods: By stating the

sales price alone without reference to the tax; by stating separately the sales price and the amount of tax to be collected thereon; by stating the sales price "plus tax" or "exclusive of tax" or by stating a sales price which includes the tax, together with the words "tax included" or "tax incl."; provided the retailer in the case of all such sales shall maintain his records to show separately the actual price of such sales and the amount of the tax paid thereon; and provided such retailer, if requested, shall furnish the consumer with a sales slip or other like evidence of the sale, showing the tax separately computed thereon. Any person violating any provision of this subsection shall be fined not more than one hundred dollars for each offense.

(5) *Notices, signs or advertisements subject to approval.* No retailer shall exhibit or display on his premises any notice, sign or other advertising matter tending to mislead the public in connection with the imposition or collection of the tax. The tax commissioner may approve a form of notice for the purpose of explaining the operation of the tax.

SEC. 12-409. *Permits.* (1) *Permit required.* No person shall engage in or transact business as a seller within this state, unless a permit or permits have been issued to him as hereinafter prescribed.

(2) *Application for permit.* Every person desiring to engage in or conduct business as a seller within this state shall file with the commissioner an application for a permit for each place of business. Every application for a permit shall be made upon a form prescribed by the commissioner and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business and such other information as the commissioner requires. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation,

by an executive officer or some person specifically authorized by the corporation to sign the application.

(3) *Permit fee.* At the time of making an application the applicant shall pay to the state tax commissioner a permit fee of one dollar for each permit.

(4) *Issuance and display of permit.* After compliance with subsections (1), (2) and (3) of this section by the applicant, the commissioner shall grant and issue to such applicant a separate permit for each place of business within the state. A permit is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued.

(5) *Reissuance of permit.* A seller whose permit has been suspended or revoked shall pay to the tax commissioner a fee of five dollars for the reissuance of a permit.

(6) *Revocation of permit.* Whenever any person fails to comply with any provision of this chapter relating to the sales tax or any regulation of the commissioner relating to the sales tax prescribed and adopted under this chapter, the commissioner, upon hearing, after giving such person ten days' notice in writing specifying the time and place of hearing and requiring him to show cause why his permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person. The notice may be served personally or by registered or certified mail. The commissioner shall not issue a new permit after the revocation of a permit unless he is satisfied that the former holder of the permit will comply with the provisions of this chapter relating to the sales tax and the regulations of the commissioner.

(7) *Unlawful acts.* Any person who violates any provision of this section shall be fined not more than fifty dollars

for the first offense and not more than one hundred dollars for each subsequent offense. For the purpose of this subsection, the engaging in or conducting of a business as a seller in this state for each period of one week without a permit shall constitute a separate offense.

SEC. 12-410. *Presumptions and resale certificates.* (1) *Presumption of taxability; resale certificate.* For the purpose of the proper administration of this chapter and to prevent evasion of the sales tax it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is purchased for resale.

(2) *Effect of certificate.* The certificate relieves the seller from the burden of proof only if taken in good faith from a person who is engaged in the business of selling tangible personal property and who holds the permit provided for in section 12-409 and who, at the time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose.

(3) *Form of certificate.* The certificate shall be signed by and bear the name and address of the purchaser, shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. The certificate shall be substantially in such form as the commissioner prescribes.

(4) *Liability of purchaser.* If a purchaser who gives a certificate makes any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the use shall be deemed a retail sale

by the purchaser as of the time the property is first used by him, and the cost of the property to him shall be deemed the gross receipts from such retail sale. If the sole use of the property other than retention, demonstration or display in the regular course of business is the rental of the property while holding it for sale, the purchaser may elect to include in his gross receipts the amount of the rental charged rather than the cost of the property to him.

SEC. 12-411. *The use tax.* (1) *Imposition and rate.* An excise tax is hereby imposed on the storage, use or other consumption in this state of tangible personal property purchased from any retailer for storage, use or other consumption in this state at the rate of three and one-half per cent of the sales price of the property.

(2) *Liability for tax.* Every person storing, using or otherwise consuming in this state tangible personal property purchased from a retailer is liable for the tax. His liability is not extinguished until the tax has been paid to this state, except that a receipt from a retailer engaged in business in this state or from a retailer who is authorized by the commissioner under such regulations as he may prescribe, to collect the tax and who is, for the purposes of this chapter relating to the use tax, regarded as a retailer engaged in business in this state, given to the purchaser pursuant to subsection (3) of this section is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

(3) *Collection by retailer.* Every retailer engaged in business in this state and making sales of tangible personal property for storage, use or other consumption in this state, not exempted under this chapter, shall, at the time of making the sales or if the storage, use or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use or other consumption becomes taxable, collect the use tax from the purchaser and give to the

purchaser a receipt therefor in the manner and form prescribed by the commissioner. For the purpose of uniformity of tax collection by the retailer the tax brackets set forth in subsection (3) of section 12-408 pertaining to the sales tax shall be employed in the computation of the tax imposed by this section.

(4) *Tax as debt.* The tax required to be collected by the retailer constitutes a debt owed by the retailer to this state.

(5) *Unlawful advertising.* The provisions of subsection (4) of section 12-408 pertaining to the sales tax shall apply with equal force to the use tax.

(6) *Separate statement of tax.* The tax required to be collected by the retailer from the purchaser shall be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sales.

(7) *Unlawful acts.* Any person violating the provisions of subsection (3), (5) or (6) shall be fined not more than one hundred dollars.

(8) *Registration of retailers.* Every retailer selling tangible personal property for storage, use or other consumption in this state shall register with the commissioner and give the name and address of all agents operating in this state, the location of all distribution or sales houses or offices or other places of business in this state and such other information as the commissioner may require.

(9) *Presumption of purchase for use; resale certificate.* For the purpose of the proper administration of this chapter and to prevent evasion of the use tax and the duty to collect the use tax, it shall be presumed that tangible personal property sold by any person for delivery in this state until the

contrary is established. The burden of proving the contrary is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is purchased for resale.

(10) *Effect of certificate.* The certificate relieves the person selling the property from the burden of proof only if taken in good faith from a person who is engaged in the business of selling tangible personal property and who holds the permit provided for by section 12-409 and who, at the time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose.

(11) *Form of certificate.* The certificate shall be signed by and bear the name and address of the purchaser, shall indicate the number of the permit issued to the purchaser and shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. The certificates shall be substantially in such form as the commissioner may prescribe.

(12) *Liability of purchaser.* If a purchaser who gives a certificate makes any storage or use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first so stored or used. If the sole use of the property, other than retention, demonstration or display in the regular course of business, is the rental of the property while holding it for sale, the purchaser may elect to pay the tax on the use measured by the amount of the rental charged rather than the sales price of the property to him.

(13) *Presumption of purchase from retailer.* It shall be presumed that tangible personal property shipped or brought to this state by the purchaser was purchased from a retailer for storage, use or other consumption in this state.

SEC. 12-412. *Exemptions.* Taxes imposed by this chapter shall not apply to the gross receipts from the sale of and the storage, use or other consumption in this state with respect to the following items:

(a) *The United States, the state or subdivisions.* Sales of tangible personal property to the United States, the state of Connecticut or any of the political subdivisions thereof, or its or their respective agencies.

(b) *Federal exemptions.* Sales of tangible personal property which this state is prohibited from taxing under the constitution or laws of the United States.

(c) *Gas, water, electricity, telephone and telegraph services.* The sale, furnishing or service of gas, water, electricity, telephone and telegraph when delivered to consumers through mains, lines or pipes.

(d) *Prescription medicines.* Sales of medicine only by prescription.

(e) *Nonprofit charitable hospitals.* Sales of tangible personal property to and by nonprofit charitable hospitals in this state for the exclusive purposes of such institutions.

(f) *Newspapers and magazines.* Sales of magazines by subscription and of newspapers.

(g) *Cigarettes.* Sales of cigarettes upon the sale of which a tax is imposed by the law of this state.

(h) *Charitable and religious organizations.* Sales of tangible personal property to charitable and religious organizations.

(i) *Educational institution meals.* Sales of food products and meals in a student cafeteria, dining-hall, dormitory, fraternity or sorority maintained in a private, public or pa-

rochial school, college or university, to members of such institutions or organizations.

(j) *Children's clothing.* Sales of articles of children's clothing, classified as such in accordance with the recognized standards of the trade, for the express and exclusive use of children and subject to regulations prescribed by the commissioner.

(k) *Personal services.* Professional, insurance or personal service transactions which involve sales as inconsequential elements for which no separate charges are made.

(l) *Livestock, rabbits and poultry; feed; seeds and tree seedlings; plants; fertilizer.* (1) Sales of livestock, rabbits and poultry of a kind which ordinarily constitute food for human consumption; (2) sales of feed, including the bags in which it is customarily contained, for livestock, rabbits and poultry of a kind which ordinarily constitute food for human consumption or are to be sold in the regular course of business; (3) sales of seeds and tree seedlings or transplants sold by the state forester under section 23-23; (4) sales of fertilizer. Fertilizer shall include ground limestone, hydrated lime, insecticides, fungicides, seed inoculants, seed disinfectants and plant hormones, as well as other substances commonly regarded in the same category and for the same use; (5) sales of plants, including parts of plants, suitable for planting to produce food for human consumption or when such plants, including parts thereof or the produce thereof, are to be sold in the regular course of business, including such item as seedpotatoes, onion sets, asparagus roots, berry plants or bushes and fruit trees. (6) Sales of draft horses.

(m) *Food products.* The sale of food products for human consumption. "Food products" include cereals and cereal products, milk and milk products, oleomargarine, meat and meat products, fish and fish products, eggs and egg prod-

ucts, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products other than candy and confectionery, coffee and coffee substitutes, tea, cocoa and cocoa products other than candy and confectionery. "Food products" do not include spirituous, malt, or vinous liquors, soft drinks, sodas or beverages such as are ordinarily dispensed at bars and soda fountains, or in connection therewith, medicines except by prescription, tonics and preparations in liquid, powdered, granular, tablet, capsule, lozenge and pill form sold as dietary supplements or adjuncts. "Food products" also do not include meals served on or off the premises of the retailer or drinks or foods furnished, prepared or served for consumption at tables, chairs or counters or from trays, glasses, dishes or other tableware provided by the retailer, except for meals for which the purchaser is charged a total of less than one dollar as provided in subsection (q) of this section.

(n) *Containers.* (1) Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container; (2) containers when sold with the contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by this chapter; (3) returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling. As used herein, "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are "nonreturnable containers." Nothing in this subsection shall be construed so as to tax the gross receipts from the sale of or the storage, use or other consumption in this state of bags in which feed for livestock and poultry, as defined in subsection (l), is customarily contained.

(o) *Motor vehicle fuel.* There are exempted from the taxes imposed by this chapter the gross receipts from the dis-

tribution of and the storage, use or other consumption in this state of motor vehicle fuel the distribution of which in this state is subject to the tax imposed by the laws of this state.

(p) *Domestic fuel.* Sales of fuel used exclusively for domestic purposes.

(q) *Sales of meals.* The sale of a meal consisting of any of the items defined as food products in subsection (m) hereof for consumption on the premises and for which the purchaser is charged a total of less than one dollar. The exemption provided herein shall apply to the total charge for each such meal separately computed, whether the purchaser pays for meals other than his own, or not. The gross receipts from all such meals costing less than one dollar shall be exempt from the tax imposed by this chapter, provided the retailer claiming such exemptions shall maintain adequate records to support the same, otherwise such gross receipts shall be subject to the tax.

(r) *Production materials.* Sales of and the storage, use or other consumption of materials, rope, fishing nets, tools and fuel or any substitute thereof, but excluding machinery or replacement parts thereof used in production, which become an ingredient or component part of tangible personal property to be sold or which are consumed and used directly in agricultural production or in the fishing industry or in an industrial plant in the actual fabrication of the finished product to be sold. The word "machinery" as used herein shall mean the basic machine itself including all of its component parts and contrivances, such as belts, pulleys, shafts, moving parts, operating structures and all equipment or devices used or required to control regulate or operate the machinery. For the purpose of this subsection, the raising of poultry and livestock shall be construed to be included in the term "agricultural production." Sales of and the storage, use or other consumption of materials, tools and fuel or any substitute thereof, but ex-

cluding machinery or replacement parts thereof, when such products are used and consumed directly in the furnishing of power to an industrial manufacturing plant or in the furnishing of gas, water, steam or electricity when delivered to consumers through mains, lines or pipes.

(s) *Oxygen; blood plasma; prostheses.* Sales of oxygen, blood or blood plasma when sold for medical use; sales of artificial devices individually designed, constructed or altered solely for the use of a particular crippled person so as to become a brace, support, supplement, correction or substitute for the bodily structure, including the extremities of the individual; sales of artificial limbs, artificial eyes and other equipment worn as a correction or substitute for any functioning portion of the body, and artificial hearing aids when designed to be worn on the person of the owner or user; sales of crutches and wheel chairs for the use of invalids and crippled persons.

(t) *Flyable aircraft and equipment.* Sales of and the storage, use or other consumption of flyable aircraft complete with necessary equipment and modifications, but not separate engines and parts thereof, sold to persons taking delivery and using such aircraft as certificated or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United States or any foreign government, or sold to any foreign government for use by such government outside of this state, or sold to persons who are not residents of this state and who will not use such aircraft in this state otherwise than in the removal of such aircraft from this state.

(u) *Personal property for incorporation into water treatment facilities.* Sales of and the storage, use or other consumption of tangible personal property acquired for incorporation into facilities for the treatment of industrial waste before the discharge thereof into any waters of the state or

into any sewerage system emptying into such waters, the primary purpose of which is the reductions, control or elimination of pollution of such waters, certified as approved for such purpose by the water resources commission. For the purposes of this subdivision "industrial waste" means any harmful thermal effect or any liquid, gaseous or solid substance or combination thereof resulting from any process of industry, manufacture, trade or business or from the development or recovery of any natural resource.

(v) *Personal property for incorporation into air pollution control facilities.* Sales of and the storage, use or other consumption of tangible personal property acquired for incorporation into facilities, the primary purpose of which is the reduction, control or elimination of air pollution, certified as approved for such purpose by the air pollution control commission.

SEC. 12-413. *Exemptions from use tax.* (1) *Where sales tax applicable.* The storage, use or other consumption in this state of property, the gross receipts from the sale of which are required to be included in the measure of the sales tax, is exempted from the use tax.

(2) *Property purchased from United States.* The storage, use or other consumption in this state of property purchased from any incorporated agency or instrumentality of the United States, except (a) any property reported to the Surplus Property Board of the United States or any successor thereto, as surplus property by any owning agency; and (b) any property included in any contractor inventory, is exempted from the use tax. "Surplus property," "owning agency," and "contractor inventory" as used in this section have the meanings ascribed to them in that act of the Congress of the United States known as the "Surplus Property Act of 1944."

(3) *Purchase brought into state by resident.* The use tax shall not apply to the purchase of any articles of tangible personal property which have been brought into this state on the person of a resident of this state when the purchase price of the same does not exceed twenty-five dollars; provided such purchase shall be for personal use or consumption in this state and not for use in consumption in carrying on a trade, occupation, business or profession.

SEC. 12-414. *Returns and payments.* (1) *Due date.* The taxes imposed by this chapter are due and payable to the commissioner quarterly on or before the last day of the month next succeeding each quarterly period. "Quarterly period" means a period of three calendar months commencing on the first day of January, April, July or October of each year or, if any seller commences business on a date other than the first day of January, April, July or October, a period beginning on the date of commencement of business and ending on December thirty-first, March thirty-first, June thirtieth or September thirtieth.

(2) *Return.* On or before the last day of the month following each quarterly period of three months, a return for the preceding quarterly period shall be filed with the commissioner in such form as the commissioner may prescribe. For purposes of the sales tax a return shall be filed by every seller. For purposes of the use tax a return shall be filed by every retailer engaged in business in the state and by every person purchasing tangible personal property, the storage, use or other consumption of which is subject to the use tax, who has not paid the use tax due a retailer required to collect the tax, except that every person making such purchases for personal use or consumption in this state, and not for use or consumption in carrying on a trade, occupation, business or profession, need file only one individual use tax return covering purchases during a calendar year. Such return shall be filed and the tax due thereon paid on or before the last day of the

month succeeding the end of the calendar year for which such return is filed. Returns should be signed by the person required to file the return or by his authorized agent but need not be verified by oath.

(3) *Contents of return.* For purposes of the sales tax the return shall show the gross receipts of the seller during the preceding reporting period. For purposes of the use tax, in case of a return filed by a retailer, the return shall show the total sales price of the property sold by him, the storage, use or consumption of which property became subject to the use tax during the preceding reporting period; in case of a return filed by a purchaser, the return shall show the total sales price of the property purchased by him, the storage, use or consumption of which became subject to the use tax during the preceding reporting period. The return shall also show the amount of the taxes for the period covered by the return in such manner as the commissioner may require and such other information as the commissioner deems necessary for the proper administration of this chapter. The tax commissioner is authorized in his discretion, for purposes of expediency, to permit returns to be filed in an alternative form wherein the person filing the return may elect to report his gross receipts, including the tax reimbursement to be collected as provided for herein, as a part of such gross receipts or to report his gross receipts exclusive of the tax collected in such cases where the gross receipts from sales have been segregated from tax collections. In the case of the former, ninety-six and six-tenths per cent of such gross income may be considered to be the gross receipts from sales exclusive of the taxes collected thereon.

(4) *Filing return.* Returns, together with the amount of the tax due thereon, shall be filed with the tax commissioner.

(5) *Return periods.* The commissioner, if he deems it

necessary in order to insure payment to or facilitate the collection by the state of the amount of taxes, may require returns and payment of the amount of taxes for other than quarterly periods.

(6) *Extension of time.* The commissioner for good cause may extend the time for making any return and paying any amount required to be paid under this chapter, if a written request therefor is filed with the commissioner together with a tentative return which must be accompanied by a payment of the tax, which shall be estimated in such tentative return, on or before the last day for filing the return. Any person to whom an extension is granted shall pay, in addition to the tax, interest at the rate of one-half of one per cent per month, or fraction thereof, from the date on which the tax would have been due without the extension until the date of payment.

SEC. 12-415. *Deficiency assessments.* (1) *Deficiency assessments.* If the commissioner is not satisfied with the return of the tax or the amount of tax required to be paid to the state by any person, he may compute and assess the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his possession or that may come into his possession. One or more deficiency assessments may be made of the amount due for one or for more than one period.

(2) *Interest.* The amount of the assessment, exclusive of penalties, shall bear interest at the rate of one-half of one per cent per month, or fraction thereof, from the last day of the month succeeding the quarterly period for which the amount or any portion thereof should have been returned until the date of payment.

(3) *Offsets.* In making an assessment the commissioner may, in his discretion, offset overpayments for a period or

periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties and against the interest on the underpayments. The interest on underpayments and overpayments shall be computed on the basis of one-half of one per cent per month, or fraction thereof, from the last day for the filing of the respective returns, but the allowance of interest on overpayments shall be limited to the provisions of this subsection and subsection (2) of section 12-416.

(4) *Ten per cent penalty.* If any part of the deficiency for which a deficiency assessment is made is due to negligence or intentional disregard of this chapter or authorized regulations, a penalty of ten per cent of the amount of assessment shall be added thereto.

(5) *Twenty-five per cent penalty.* If any part of the deficiency for which an assessment is made is due to fraud or an intent to evade this chapter or authorized regulations, a penalty of twenty-five per cent of the amount of the assessment shall be added thereto.

(6) *Notice of assessment.* The commissioner shall give to the retailer or person storing, using or consuming tangible personal property written notice of his assessment. The notice may be served personally or by mail. If by mail, it shall be addressed to the retailer or person storing, using or consuming tangible personal property at his address as it appears in the records of the commissioner's office. In case of service by mail of any notice required by this chapter, the service is complete at the time of deposit in the United States post office or mail box.

(7) *Limitations; deficiency assessments.* Except in the case of fraud, intent to evade this chapter or authorized regulations, failure to make a return, or claim for additional amount pursuant to subsection (3) of section 12-418, every

notice of a deficiency assessment shall be mailed within three years after the last day of the month following the quarterly period for which the amount is proposed to be assessed or within three years after the return is filed, whichever period expires later. The limitations specified in this subsection does not apply in case of a sales tax proposed to be assessed with respect to sales of property for the storage, use or other consumption of which notice of a deficiency assessment has been or is given pursuant to subsection (6) of this section, subsection (5) of section 12-416, subsection (2) of section 12-417 and this subsection. The limitation specified in this subsection does not apply in case of an amount of use tax proposed to be assessed with respect to storage, use or other consumption of property for the sale of which notice of a deficiency assessment has been or is given pursuant to said subsections and this subsection.

(8) *Waiver.* If, before the expiration of the time prescribed in subsection (7) of this section for the mailing of a notice of deficiency determination, the taxpayer has consented in writing to the mailing of the notice after such time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

SEC. 12-416. *Assessment if no return made.* (1) *Assessment; failure to file return.* If any person fails to make a return, the commissioner shall make an estimate of the amount of the gross receipts of the person or, as the case may be, of the amount of the total sales price of tangible personal property sold or purchased by the person, the storage, use or other consumption of which in this state is subject to the use tax. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the commissioner's possession or may come into his possession. Upon the basis of

this estimate the commissioner shall compute and determine the amount required to be paid to the state, adding to the sum thus arrived at a penalty equal to ten per cent thereof. One or more assessments may be made for one or for more than one period.

(2) *Offsets.* In making an assessment the commissioner may, in his discretion offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties and against the interest on the underpayments. The interest on underpayments and overpayments shall be computed on the basis of one-half of one per cent per month or fraction thereof from the last day for the filing of the respective returns.

(3) *Interest.* The amount of the assessment, exclusive of penalties, shall bear interest at the rate of one-half of one per cent per month, or fraction thereof, from the last day of the month succeeding the quarterly period for which the amount or any portion thereof should have been returned until the date of payment.

(4) *Penalties.* If the failure of any person to file a return is due to fraud or an intent to evade this chapter or regulations, a penalty of twenty-five per cent of the amount required to be paid by the person, exclusive of penalties, shall be added thereto in addition to the ten per cent penalty provided in subsection (1) of this section.

(5) *Notice of assessment.* Promptly after making his assessment the commissioner shall give to the person written notice of the estimate, assessment and penalty, the notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency assessment.

SEC. 12-417. *Jeopardy assessments.* (1) *Jeopardy assessment.* If the commissioner believes that the collection

of any tax or any amount of tax required to be collected and paid to the state or of any assessment will be jeopardized by delay, he shall thereupon make an assessment of the tax or amount of tax required to be collected, noting that fact upon the assessment. The amount assessed is immediately due and payable.

(2) *Interest and penalty.* If the amount specified in the assessment is not paid within ten days after service of notice thereof upon the person against whom the assessment is made, the amount becomes final at the expiration of the ten days, unless a petition for reassessment is filed within the ten days, and the delinquency penalty and the interest provided in section 12-419 shall attach to the amount of the tax or the amount of the tax required to be collected.

(3) *Petition for reassessment; security.* The person against whom a jeopardy assessment is made may file a petition for the reassessment thereof, pursuant to section 12-418, with the commissioner within ten days after the service upon him of notice of the assessment. Such person shall also, within said ten-day period, deposit with the commissioner such security as the commissioner deems necessary to insure compliance with this chapter. The security may be sold by the commissioner in the manner prescribed by section 12-430.

Sec. 12-418. *Reassessments.* (1) *Petition for reassessment.* Any person against whom an assessment is made under section 12-415 or 12-416 or any person directly interested may petition for a reassessment within thirty days after service upon such person of notice thereof. If a petition for reassessment is not filed within the thirty-day period, the assessment becomes final at the expiration of the period.

(2) *Oral hearing.* If a petition for reassessment is filed within the thirty-day period, the commissioner shall reconsider the assessment and, if the person has so requested in his

petition, shall, in his discretion, grant the person an oral hearing and shall give him ten days' notice of the time and place of the hearing. The commissioner may continue the hearing from time to time, as may be necessary, and may assign the conduct of such hearing to his representative.

(3) *Decrease or increase of assessment.* The commissioner may decrease or increase the amount of the assessment before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the commissioner at or before the hearing.

(4) *Finality date of order or decision.* The order or decision of the commissioner upon a petition for reassessment becomes final thirty days after service upon the petitioner of notice thereof.

(5) *Due date of assessment; penalty.* All assessments made by the commissioner under section 12-415 and 12-416 are due and payable at the time they become final. If they are not paid when due and payable, a penalty of ten per cent of the amount of the assessment, exclusive of interest and penalties, shall be added thereto.

(6) *Service of notice.* Any notice required by this section shall be served personally or by mail in the manner prescribed for service of notice of a deficiency assessment.

SEC. 12-419. *Interest and penalties.* Any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of assessments made by the commissioner under sections 12-415 and 12-416, within the time required shall pay a penalty of five per cent of the tax or amount of the tax during the first fifteen days that such amount remains due and unpaid, which penalty shall be increased to ten per cent thereafter, in addition to the tax or amount of the tax, plus interest at the rate of one-

half of one per cent per month, or fraction thereof, from the date on which the tax or the amount of tax required to be collected became due and payable to the state until the date of payment.

SEC. 12-420. *Collection of taxes. Delinquent taxes.* The amount of any tax, penalty or interest due and unpaid under the provisions of this chapter may be collected under the provisions of section 12-35. The warrant therein provided for shall be signed by the commissioner or his authorized agent. The amount of any such tax, penalty and interest shall be a lien, from the last filing day of any quarterly period for which the taxpayer is delinquent until discharged by payment, against all real estate of the taxpayer within the state, and a certificate of such lien signed by the commissioner may be filed for record in the office of the clerk of any town in which such real estate is situated, provided no such lien shall be effective as against any bona fide purchaser or encumbrancer of any interest in any such property to whom such property is transferred between the last day of such quarterly period and the date on which such lien is recorded. When any tax with respect to which a lien has been recorded under the provisions of this section has been satisfied, the commissioner, upon request of any interested party, shall issue a certificate discharging such lien, which certificate shall be recorded in the same office in which the lien was recorded. Any action for the foreclosure of such lien shall be brought by the attorney general in the name of the state in the superior court for the county in which the property subject to such lien is situated, or, if such property is located in two or more counties, in the superior court for any one such county and the court may limit the time for redemption or order the sale of such property or pass such other or further decree as it judges equitable.

SEC. 12-421. *Hearing by commissioner.* Any taxpayer, having paid any tax as provided by this chapter, aggrieved by

the action of the commissioner or his authorized agent in fixing the amount of such tax or in imposing any penalty hereunder, may apply to the commissioner, in writing, within thirty days after the notice of such action is delivered or mailed to him, for a hearing and a correction of the amount of the tax or penalty so fixed, setting forth the reasons why such hearing should be granted and the amount in which such tax should be reduced. The commissioner shall promptly consider each such application and may grant or deny the hearing requested. If the hearing is denied, the applicant shall be notified thereof forthwith; if it is granted, the commissioner shall notify the applicant of the time and place fixed for such hearing. After such hearing the commissioner may make such order in the premises as appears to him just and lawful and shall furnish a copy of such order to the applicant. The commissioner may, by notice in writing at any time within three years after the date when any return of any taxpayer has been due, order a hearing on his own initiative and require the taxpayer or any other individual whom he believes to be in possession of relevant information concerning the taxpayer to appear before him or his authorized agent with any specified books of account, papers or other documents, for examination under oath.

Sec. 12-422. *Appeal.* Any taxpayer aggrieved because of any order, decision, determination or disallowance of the tax commissioner under section 12-418, 12-421 or 12-425 may, within one month after service upon the taxpayer of notice of such order, decision, determination or disallowance, take an appeal therefrom to the superior court for Hartford county, which shall be accompanied by a citation to the tax commissioner to appear before said court. Such citation shall be signed by the same authority and such appeal shall be returnable at the same time and served and returned in the same manner, as is required in case of a summons in a civil action. The authority issuing the citation shall take from the appellant a bond or recognizance to the state of Connecticut, with surety

to prosecute the appeal to effect and comply with the orders and decrees of the court in the premises. Such appeals shall be preferred cases, to be heard, unless cause appears to the contrary, at the first session, by the court or by a committee appointed by it. Said court may grant such relief as may be equitable and, if such tax has been paid prior to the granting of such relief, may order the treasurer to pay the amount of such relief, with interest at the rate of six per cent per annum to the aggrieved taxpayer. If the appeal has been taken without probable cause, the court may tax double or triple costs, as the case demands; and, upon all such appeals which are denied, costs may be taxed against the appellant at the discretion of the court, but no costs shall be taxed against the state.

SEC. 12-423. *Abatement of taxes.* When any tax assessed under the provisions of this chapter has been found to be uncollectible, such tax and penalty or interest assessed in connection therewith may be abated upon the advice of the attorney general. Upon such approval the commissioner of finance and control shall certify such abatement to the comptroller and treasurer, and an itemized statement of all such abatements shall be included in the published report of the commissioner of finance and control.

SEC. 12-424. *Payments on termination of business and successor's liability.* (1) *Withholding by purchaser.* If any retailer liable for any amount under this chapter sells out his business or stock of goods or quits the business, his successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the commissioner showing that it has been paid or a certificate stating that no amount is due.

(2) *Liability of purchaser; release.* If the purchaser of a business or stock of goods fails to withhold the purchase price as required, he becomes personally liable for the payment of the amount required to be withheld by him to the ex-

tent of the purchase price, valued in money. Within sixty days after receiving a written request from the purchaser for a certificate, the commissioner shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the commissioner of the amount that must be paid as a condition of issuing the certificate. Failure of the commissioner to mail the notice shall release the purchaser from any further obligation to withhold the purchase price as above provided. The time within which the obligation of the successor may be enforced shall start to run at the time the retailer sells out his business or stock of goods or at the time that the assessment against the retailer becomes final, whichever event occurs later.

SEC. 12-425. *Overpayments and refunds.* (1) *Credits and refunds.* If the commissioner determines that any amount, penalty or interest has been paid more than once or has been erroneously or illegally collected or computed, the commissioner shall certify to the state treasurer the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid. If approved by the treasurer, the excess amount collected or paid shall be credited on any amounts then due and payable from the person under this chapter, and the balance shall be refunded, upon order of the comptroller, to the person or his successors, administrators or executors. Any overpayment of the use tax by a purchaser to a retailer who is required to collect the tax and who gives the purchaser a receipt therefor pursuant to this chapter shall be credited or refunded by the state to the purchaser.

(2) *Claim; limitation period.* No refund shall be allowed unless a claim therefor is filed with the commissioner within three years from the last day of the month succeeding the quarterly period for which the overpayment was made, or, with respect to assessments made under sections 12-415 and 12-416, within six months after the assessments become final, or within six months from the date of overpayment,

whichever period expires later. No credit shall be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the commissioner within such period, or unless the credit relates to a period for which a waiver is given pursuant to subsection (8) of section 12-415.

(3) *Condition; sales tax reimbursment.* No credit or refund of any amount paid pursuant to section 12-411 shall be allowed on the ground that the storage, use or other consumption of the property is exempted under subsection (1) of section 12-413, unless in addition to the overpayment for which the claim is filed the claimant also reimburses his vendor for the amount of the sales tax imposed upon his vendor with respect to the sale of the property and paid by the vendor to the state.

(4) *Form and content of claim.* Every claim shall be in writing and shall state the specific grounds upon which the claim is founded.

(5) *Effect of failure to file claim.* Failure to file a claim within the time prescribed in this section constitutes a waiver of any demand against the state on account of overpayment.

(6) *Notice of action on claim.* Within thirty days after disallowing any claim in whole or in part the commissioner shall serve notice of his action on the claimant in the manner prescribed for service of notice of a deficiency assessment.

SEC. 12-426. *Administration.* (1) *Enforcement by commissioner; regulations.* The commissioner shall enforce the provisions of this chapter and may adopt and enforce regulations relating to the administration and enforcement of this chapter. The commissioner may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

(2) *Employees and representatives of commissioner.* The commissioner may employ accountants, auditors, investigators, assistants and clerks necessary for the efficient administration of this chapter, in accordance with the provisions of chapter 63, and may designate representatives to conduct hearings or perform any other duties imposed by this chapter upon the commissioner.

(3) *Records.* Every seller, every retailer as defined in subdivision (b) of subsection (12) of section 12-407 and every person storing, using or otherwise consuming in this state tangible personal property purchased from a retailer shall keep such records, receipts, invoices and other pertinent papers in such form as the commissioner requires.

(4) *Examination of records.* The commissioner or any person authorized by him may examine the books, papers, records and equipment of any person liable for the use tax, and may investigate the character of the business of the person in order to verify the accuracy of any return made or, if no return is made by the person, to ascertain and determine the amount required to be paid.

(5) *Reports relative to use tax liability.* In administration of the use tax the commissioner may require the filing of information reports by any person or class of persons having in his or their possession or custody information relating to sales of tangible personal property the storage, use or other consumption of which is subject to the tax. Such reports shall be filed when the commissioner requires and shall set forth the names and addresses of purchasers of the tangible personal property, the sales price of the property, the date of sale and such other information as the commissioner may require.

(6) *Divulging of information forbidden.* Neither the commissioner, his attorney or agent nor any other officer or

employee engaged in the administration of this chapter shall make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any retailer or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person, except for purposes of photostating or microfilming; provided the governor may, by general or special order, authorize examination of the returns by other state officers, by tax officers of another state, by the federal government, if a reciprocal arrangement exists or by any other person. Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest and penalties. Any person who violates any provision of this subsection shall be fined not more than one thousand dollars.

SEC. 12-427. *Disposition of proceeds; refunds.* (1) *Settlement with treasurer.* All funds received by the tax commissioner under the provisions of this chapter shall be recorded with the comptroller and shall be deposited daily with the state treasurer. The commissioner shall issue his receipt to any taxpayer for any payment upon request.

(2) *Refunds to be made from general fund.* For the purpose of making any refund provided for in this chapter, the comptroller, upon certification of the tax commissioner and with the approval of the finance advisory committee, is authorized to draw upon the unappropriated surplus of the general fund.

(3) *Publication and disclosure of information.* The tax

commissioner shall publish in his report, required under the provisions of section 4-60, data showing the amount of taxes and the amount of penalties, assessed under the provisions of this chapter, with such classifications of taxpayers, incomes and deductions and such other facts as he deems pertinent and valuable. Such published figures shall not disclose the operations of any taxpayer in such manner as to permit the identification of such taxpayer by those unassociated with his business. The commissioner shall, at least annually, and oftener in his discretion, publish for distribution all regulations prescribed hereunder and such rulings and information as appear to him to be of general interest.

SEC. 12-428. *Violations.* (1) *Criminal penalties.* Any retailer or other person who fails or refuses to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the commissioner, or who renders a false or fraudulent return, shall be fined not more than five hundred dollars or imprisoned not more than thirty days or both for each offense.

(2) *Fraudulent returns.* Any person required to make, render, sign or verify any report who makes any false or fraudulent return, with intent to defeat or evade the assessment of an amount due, required by law to be made, shall for each offense be fined not less than three hundred dollars and not more than five thousand dollars, or be imprisoned for not more than one year or be both fined and imprisoned.

(3) *Violation of law.* Any person who violates any provision of this chapter, for which no other penalty is provided, shall be fined not more than five hundred dollars or imprisoned not more than one year or both.

SEC. 12-429. *Oaths and subpoenas.* The commissioner and any agent of the commissioner authorized to conduct any inquiry, investigation or hearing hereunder may administer

oaths and take testimony under oath relative to the matter of inquiry or investigaion. At any hearing ordered by the commissioner, the commissioner or his agent authorized to conduct such hearing and having authority by law to issue such process may subpoena witnesses and require the production of books, papers and documents pertinent to such inquiry. No witness under subpoena authorized to be issued by the provisions of this chapter shall be excused from testifying or from producing books or papers on the ground that such testimony or the production of such books or other documentary evidence would tend to incriminate him, but such evidence or the books or papers so produced shall not be used in any criminal proceeding against him. If any person disobeys such process or, having appeared in obedience thereto, refuses to answer any pertinent question put to him by the commissioner or his authorized agent, or to produce any books and papers pursuant thereto, the commissioner or such agent may apply to the superior court for the county wherein the taxpayer resides or wherein the business has been conducted, or to any judge of said court if the same is not in session, setting forth such disobedience to process or refusal to answer, and said court or such judge shall cite such person to appear before said court or such judge to answer such question or to produce such books and papers and, upon refusal so to do, shall commit such person to jail until he testifies, but not for a longer period than sixty days. Notwithstanding the serving of the term of such commitment by any person the commissioner may proceed in all respects with such inquiry and examination as if the witness had not previously been called upon to testify. Officers who serve subpoenas issued by the commissioner or under his authority and witnesses attending hearing conducted by him hereunder shall receive fees and compensation at the same rates as officers and witnesses in the courts of this state, to be paid on vouchers of the commissioner on order of the comptroller from the appropriation for the administration of this chapter.

SEC. 12-430. *Miscellaneous provisions.* (1) *Security for tax.* The commissioner, whenever he deems it necessary to insure compliance with this chapter, may require any person subject thereto to deposit with him such security as the commmissioner determines. The amount of the security shall be fixed by the commissioner but shall not be greater than twice the person's estimated average liability for the period for which he files returns, determined in such manner as the commissioner deems proper, or ten thousand dollars, whichever amount is the lesser. The amount of the security may be increased or decreased by the commissioner subject to the limitations herein provided. The commissioner may sell the security at public auction if it becomes necessary so to do in order to recover any tax or any amount required to be collected, or any interest or penalty due. Notice of the sale may be served upon the person who deposited the security personally or by mail. If by mail, service shall be made in the manner prescribed for service of a notice of a deficiency assessment and shall be addressed to the person at his address as it appears in the records of the commissioner's office. Security in the form of a bearer bond, issued by the United States or the state of Connecticut, which has a prevailing market price may, however, be sold by the commissioner at private sale at a price not lower than the prevailing market price thereof. Upon any sale any surplus above the amounts due shall be returned to the person who deposited the security.

(2) *Penalty for delinquent filing of return.* In addition to the other penalty provided for in section 12-428, a penalty of two dollars and fifty cents shall be imposed upon each person required by this chapter to file a return when the same is filed subsequent to the last day of filing for each quarterly or other period. The commissioner, in his discretion and for due cause shown, may waive such penalty.

(3) *Evidence of tax on motor vehicles.* Each person before obtaining an original or transferral registration for a motor vehicle in this state shall furnish evidence that any tax due thereon pursuant to the provisions of this chapter has been paid in accordance with regulations prescribed by the tax commissioner, and on forms approved by the tax commissioner and the motor vehicle commissioner. The motor vehicle commissioner shall, upon the request of the tax commissioner, after hearing by the tax commissioner, suspend or revoke a motor vehicle registration of any person who fails to pay any tax due in connection with the sale, storage, use or other consumption of such motor vehicle pursuant to the provisions of this chapter.

(4) *Trade-in of motor vehicles or farm tractors.* Where a trade-in of a motor vehicle is received by a motor vehicle dealer, licensed under the provisions of subdivision (D) of part III of chapter 246 and holding a valid seller's permit, upon the sale of another motor vehicle to a consumer, or where a trade-in of a farm tractor is received by retailer of farm tractors holding a valid seller's permit, upon the sale of another farm tractor to a consumer, the tax is only on the difference between the sale price of the motor vehicle or farm tractor purchased and the amount allowed on the motor vehicle or farm tractor traded in on such purchase. When any such motor vehicle or farm tractor traded in is subsequently sold to a consumer or user, the tax provided for in this chapter applies.

(5) *Payment of sales or use tax to another state.* If any article of tangible personal property has already been subjected to a sales or use tax by any other state or political subdivision thereof and payment made thereon in respect to its sale or use in an amount less than the tax imposed by this chapter, the provisions of this chapter shall apply, but at a rate measured by the difference, only, between the rate herein fixed and the rate by which the previous tax upon the sale or

use was computed. If such tax imposed in such other state or political subdivision thereof is equivalent to or in excess of the rate imposed under this chapter at the time of such sale or use, then no tax shall be due on such article.

SEC. 12-431. *Tax on casual sales of motor vehicles, boats and airplanes.* In case of the purchase of any motor vehicle, boat or airplane other than from a licensed motor vehicle dealer or a dealer or retailer of boats or airplanes, the receipts therefrom shall not be included in the measure of the sales tax, but the purchaser thereof shall pay a use tax on the total purchase price thereof to the tax commissioner, as provided in section 12-411, in the case of tangible personal property purchased from a retailer and, in the case of motor vehicles, before obtaining an original or transferral registration in accordance with regulations prescribed by the tax commissioner and on forms approved by the tax commissioner and the commissioner of motor vehicles; provided no use tax shall be payable in cases of transfer or purchase (a) when the transferee or purchaser is the spouse, mother, father, brother, sister or child of the seller or (b) when a motor vehicle is transferred or sold in connection with the organization, reorganization, dissolution or partial liquidation of an incorporated or unincorporated business, provided (1) the last taxable sale, transfer or use of the vehicle was subjected to a tax imposed by this chapter, (2) the tranferee is the incorporated or unincorporated business or a stockholder, owner, member or partner thereof and (3) any gain or loss to the transferor is not recognized for federal income tax purposes under the provisions of the Internal Revenue Code and treasury regulations and rulings issued thereunder.

SEC. 12-432. *Use of proceeds.* All proceeds of the tax collected under the provisions of this chapter shall be allocated to and expended for public health, welfare and education purposes only.

SEC. 12-432a. *Civil actions on sales solicited by catalogs.* No retailer, as defined in subsection (12) (d) of section 12-407, who fails to comply with the provisions of chapter 219 of the general statutes, as herein amended, shall maintain any action in law or equity in this state on any sale or transaction included under said subsection (12) (d).

78th Congress, 2d Session } SENATE Report No. 959

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT AMENDMENT

JUNE 12 (legislative day, MAY 9, 1944. — Ordered to be printed

MR. BRIDGES, from the Committee on Military Affairs, submitted the following

REPORT

[To accompany H. R. 4733]

The Committee on Military Affairs, to whom was referred the bill, H. R. 4733, to amend section 514 of the Soldiers' and Sailors' Civil Relief Act, having considered the same, submit the following report thereon, with the recommendation that it do pass.

The purpose of the proposed legislation is to clarify the intent of section 514 of the Soldiers' and Sailors' Civil Relief Act as added by section 17 of the act of October 6, 1942 (56 Stat. 769, 777). When that provision of law was added to the act to relieve persons in service from liability of double taxation by being moved from one State to another under orders, it was intended that it should apply to personal-property taxes

as well as to income taxes. As presently constituted, it primarily affects taxes in respect to income and other taxes based on residence or domicile, but it does not prevent the State of "temporary residence" from taxing tangible personal property actually located in such State so long as the tax does not depend on residence or domicile. A few States have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdiction does not acquire a situs for taxation, but it has been held that section 514 of the act as now written does not affect the right of a State to assess personal-property taxes on property within its jurisdiction. The result has been that servicemen find themselves at times subjected to personal-property taxes on the same property in more than one State during the same calendar year by reason of being moved under orders.

Your committee considers that the existing law pertaining to State taxation of the personal property of persons in military service present in the various States in compliance with military orders should be clarified; that the military personnel concerned should not be subjected to multiple taxation of personal property by the various States and should be given the same protection as to personal property taxes as is now provided in respect of income taxes.

Letter of the War Department follows:

WAR DEPARTMENT,
Washington, June 9, 1944.

HON. ROBERT R. REYNOLDS,
Chairman, Committee on Military Affairs,
United States Senate.

DEAR SENATOR REYNOLDS: The War Department has no objection to the enactment of H. R. 4733, Seventy-eighth Con-

gress, an act to amend section 514 of the Soldiers' and Sailors' Relief Act.

The purpose of the proposed legislation is to prevent the multiple taxation of the personal property of military personnel by the various States, which it is understood was one of the purposes of section 514 of the Soldiers' and Sailors' Civil Relief Act as added by the act of October 6, 1942 (56) Stat. 769, 777).

As presently worded, section 514 of the act primarily affects taxes in respect of income and other taxes based on residence or domicile. Nothing in that section prevents the State of "temporary residence" from taxing tangible personal property actually located in such State, so long as the tax does not depend on residence or domicile. A few States, however, have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdictions does not acquire a situs for taxation.

The proposed legislation will not result in any additional cost to the Government.

The Bureau of the Budget advised with respect to a similar report on H. R. 4733 to the Committee on Military Affairs, House of Representatives, that there was no objection to its submission to the Congress.

Sincerely yours,

Secretary of War.
HENRY L. STIMSON,

The report of the House Military Affairs Committee (Rept. No. 1514) is appended hereto and made a part of this report.

[H. Rept. No. 1514, 78th Cong., 2d sess.]

The Committee on Military Affairs, to whom was referred

the bill (H. R. 4733) to amend section 514 of the Soldiers' and Sailors' Relief Act, having considered the same, submit the following report thereon, with the recommendation that it do pass with the following amendment:

Strike out all after the enacting clause and insert the following language:

"SEC. 514. (1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, political subdivision, or District: *Provided*, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be

effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942."

"(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect of motor vehicles or the use thereof, provided that the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.

"SEC. 2. Nothing contained in this Act shall be construed to require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees, or excises imposed in respect of motor vehicles or the use thereof) paid prior to the date of its enactment."

GENERAL COMMENT

When the Soldiers' and Sailors' Civil Relief Act of 1940 was amended by the act of October 6, 1942, a provision was written into the act to relieve persons in the service from liability of double taxation by being moved from one State to another under orders. It was intended that this should apply to personal property taxes as well as income taxes. However, it has been held that under the wording of such amendment personal property taxes were not included. The result has been that servicemen find themselves at times subjected to personal property taxes in more than one State by reason of being moved under orders.

The purpose of the present act is to correct this situation and to give to the servicemen the same protection as to personal property taxes that they now have as to income taxes.

CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, there follows the provisions of existing law and the changes proposed:

EXISTING LAW

SEC. 514. For the purposes of taxation in respect of any person, or of his property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the income or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to the date of the enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942.

PROPOSED

SEC. 514. (1) The income, gross receipts, and personal property, tangible or intangible (including automotive vehi-

cles), of any person in the military service shall not be subject to taxation by any State, Territory, possession, political subdivision thereof, or the District of Columbia, by reason of (a) his temporary residence, (b) receipt of income or gross recepits, or (c) the temporary location of personal property, within a State, Territory, possession, political subdivision thereof, or the District of Columbia: *Provided,* That nothing contained in this section shall prevent the State, Territory, possession, political subdivision thereof, or the District of Columbia, wherein a person in the military service resided or was domiciled prior to the time when he first acquired a temporary residence, as defined herein, from imposing a tax upon the income, gross receipts, or personal property of such persons, if it otherwise has jurisdiction to impose such tax: *And provided further,* That nothing contained in this section shall prevent a State, Territory, possession, political subdivision thereof, or the District of Columbia from imposing taxes upon income or gross receipts, other than compensation for military service, derived from sources therein, nor from imposing a tax on personal property situated therein other than at a temporary location, as herein defined.

S. Repts., 78-2. vol 4——47

PROPOSED

(2) After the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, no State, Territory, possession, political subdivision thereof, or the District of Columbia shall make claim for, collect, or receive from any person in the military service any tax made inapplicable by subsection (1) hereof and which has accrued subsequent to the declaration of the national emergency made by the President on September 8, 1939; but the refund of taxes collected or received prior to such effective date shall not be required by the provisions of this section.

(3) This section shall not be deemed in any manner to authorize any State, Territory, possession, political subdivision thereof, or the District of Columbia to impose any tax upon personal property located in or on any Federal area.

(4) (a) When after September 8, 1939, a person in the military service has changed his physical residence in order to comply with military orders he shall be deemed to have acquired a "temporary residence"; except that for purposes of taxation by a State, Territory, possession, or the District of Columbia he shall be deemed to have acquired a "temporary residence" only if he shall have moved outside the exterior boundaries of such State, Territory, possession, or the District of Columbia.

(b) Personal property shall be deemed to have a "temporary location" when a person in the military service has such property at his "temporary residence" or when, on changing from one "temporary residence" to another, he leaves it at a previous "temporary residence."

(c) The term "Federal area" means any lands or premises owned or acquired by or for the use of the United States or any department, establishment, or agency of the United States.

The amendment proposed by the committee as compared to existing law is as follows (matter in which no change is proposed is shown in roman; matter proposed to be omitted is shown in black brackets; new matter is prinited in italics):

"SEC. 514. (1) For the purposes of taxation in respect of any person, or of his *personal* property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political sub-

division of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the *personal property*, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and *personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, political subdivision, or District: Provided, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction.* This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to [the date of the enactment of the Soldiers' and Sailors' Civil Relief Act amendment of 1942."] *October 6, 1942.*

"(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect of motor vehicles or the use thereof, provided that the license, fee or excise required by the State, Territory, possession or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

SEC. 2. *Nothing contained in this Act shall be construed to require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees or excises imposed in respect of motor vehicles or the use thereof) paid prior to the date of its enactment.*

78th Congress
2d Session

Report
No. 1514

HOUSE OF REPRESENTATIVES

AMENDING SECTION 514 OF THE SOLDIERS' AND SAILORS' RELIEF ACT

MAY 25, 1944. — Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

MR. SPARKMAN, from the Committee on Military Affairs, submitted the following

REPORT

[To accompany H. R. 4733]

The Committee on Military Affairs, to whom was referred the bill (H. R. 4733) to amend section 514 of the Soldiers' and Sailors' Relief Act, having considered the same, submit the following report the eon, with the recommendation that it do pass with the following amendment:

Strike out all after the enacting clause and insert the following language:

SEC. 514. (1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia,

such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, political subdivision, or District: *Provided*, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

(2) When used in this section, (a) the term "personal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect of motor vehicles or the use thereof, provided that the license, fee or excise required by the State, Territory, possession or District of Columbia of which the person is a resident or in which he is domiciled has been paid.

SEC. 2. Nothing contained in this Act shall be construed to require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees or excises imposed in respect of motor vehicles or the use thereof) paid prior to the date of its enactment.

GENERAL COMMENT

When the Soldiers' and Sailors' Civil Relief Act of 1940 was amended by the act of October 6, 1942, a provision was written into the act to relieve persons in the service from liability of double taxation by being moved from one State to another under orders. It was intended that this should apply to personal property taxes as well as income taxes. However, it has been held that under the wording of such amendment personal property taxes were not included. The result has been that servicemen find themselves at times subjected to personal property taxes in more than one State by reason of being moved under orders.

The purpose of the present act is to correct this situation and to give to the servicemen the same protection as to personal property taxes that they now have as income taxes.

CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, there follows the provisions of existing law and the changes proposed:

EXISTING LAW

SEC. 514. For the purposes of taxation in respect of any person, or of his property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any

State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the income or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District. This section shall be effective as of September 8, 1939, except that its shall not require the crediting or refunding of any tax paid prior to the date of the enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942.

PROPOSED

SEC. 514. (1) The income, gross receipts, and personal property, tangible or intangible (including automotive vehicles), of any person in the military service shall not be subject to taxation by any State, Territory, possession, political subdivision thereof, or the District of Columbia, by reason of (a) his temporary residence, (b) receipt of income or gross receipts, or (c) the temporary location of personal property, within a State, Territory, possession, political subdivision thereof, or the District of Columbia: *Provided*, That nothing contained in this section shall prevent the State, Territory, possession, political subdivision thereof, or the District of Columbia, wherein a person in the military service resided or was domiciled prior to the time when he first acquired a temporary residence, as defined herein, from imposing a tax

upon the income, gross receipts, or personal property of such persons, if it otherwise has jurisdiction to impose such tax: *And provided further*, That nothing contained in this section shall prevent a State, Territory, possession, political subdivision thereof, or the District of Columbia from imposing taxes upon income or gross receipts, other than compensation for military service, derived from sources therein, nor from imposing a tax on personal property situated therein other than at a temporary location, as herein defined.

(2) After the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, no State, Territory, possession, political subdivision thereof, or the District of Columbia shall make claim for, collect, or receive from any person in the military service any tax made inapplicable by subsection (1) hereof and which has accrued subsequent to the declaration of the national emergency made by the President on September 8, 1939; but the refund of taxes collected or received prior to such effective date shall not be required by the provisions of this section.

(3) This section shall not be deemed in any manner to authorize any State, Territory, possession, political subdivision thereof, or the District of Columbia to impose any tax upon personal property located in or on any Federal area.

(4) (a) When after September 8, 1939, a person in the military service has changed his physical residence in order to comply with military orders he shall be deemed to have acquired a "temporary residence"; except that for purposes of taxation by a State, Territory, possession, or the District of Columbia he shall be deemed to have acquired a "temporary residence" only if he shall have moved outside the exterior boundaries of such State, Territory, possession, or the District of Columbia.

(b) Personal property shall be deemed to have a "temporary location" when a person in the military service has such property at his "temporary residence" or when, on changing from one "temporary residence" to another, he leaves it at a previous "temporary residence."

(c) The term "Federal area" means any lands or premises owned or acquired by or for the use of the United States or any department, establishment, or agency of the United States.

The amendment proposed by the committee as compared to existing law is as follows (matter in which no change is proposed is shown in roman; matter proposed to be omitted is shown in black brackets; new matter is printed in italics):

"SEC. 514. (1) For the purposes of taxation in respect of any person, or of his *personal* property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being so absent. For the purposes of taxation in respect of the *personal property*, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which

he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, *and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, political subdivision, or District: Provided, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction.* This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to [the date of the enactment of the Soldiers' and Sailors' Civil Relief Act amendment of 1942."] *October 6, 1942.*

"(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect of motor vehicles or the use thereof, provided that the license, fee or excise required by the State, Territory, possession or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

SEC. 2. *Nothing contained in this Act shall be construed to require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees or excises imposed in respect of motor vehicles or the use thereof) paid prior to the date of its enactment.*

87th Congress
2d Session } SENATE Report No. 2182

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT AMENDMENT

September 28, 1962

REPORT

[To accompany H. R. 9747]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 9747) to amend section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 to provide that where personal property taxes may not be imposed upon property of a serviceman located in a State, such taxes may not be imposed upon such property after he is transferred out of such State, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

EXPLANATION OF THE BILL

This bill amends the tax immunity provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 574(1)), so as to clarify a situation which sometimes results in taxation contrary to the intent of the act. More specifically, the bill provides that where a serviceman is absent from his residence or domicile solely by reason of compliance with military or naval orders, the tax immunity provision of existing law shall apply with respect to his personal property, or the use thereof, within any tax jurisdiction other than his State of residence or domicile, regardless of where such serviceman may be located in compliance with such orders.

The Soldiers' and Sailors' Civil Relief Act already makes clear that a serviceman, living with his family and owning personal property in a State other than his State of domicile, is not subject to taxation on his personal property by the nondomiciliary State.

In at least one situation, however, after a veteran was transferred overseas to a hardship post where he could not take his family, the nondomiciliary State imposed a tax on the serviceman's personal property. The basic intent of the original Civil Relief Act was to exempt servicemen from this form of taxation, except by a State of residence or domicile. To permit taxation of personal property by a nondomiciliary State, because of a transfer to active duty outside such State, would obviously be violative of the original intent of the Soldiers' and Sailors' Civil Relief Act. This legislation provides an equitable clarification of the situation: It assures that transfers of servicemen essential to their military duty shall not prejudice basic rights established by the Congress in recognition of the peculiar and special circumstances of military service.

There would be no cost resulting from enactment of the proposal. All of the provisions of the Soldiers' and Sailors' Civil Relief Act, other than those concerning insurance, are enforced by local courts and are not subject to centralized administration by a Federal agency.

The favorable reports of the Veterans' Administration, Bureau of the Budget, and Department of Defense now follow:

SEPTEMBER 10, 1962.

HON. LISTER HILL,

Chairman, Committee on Labor and Public Welfare,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your request for a report by the Veterans' Administration on H.R. 9747, 87th Congress.

The bill, if enacted, would amend the Soldiers' and Sailors' Civil Relief Act of 1940 to provide that where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, the provisions of section 514 (exempting person property from certain State taxes) shall apply with respect to personal property, or the use thereof, within any tax jurisdiction other than the serviceman's place of residence or domicile, regardless of where the owner may be serving in compliance with such orders.

Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 App. U.S.C. 574), provides that for the purposes of taxation of personal property a person in the military service shall not be deemed to have lost a residence or domicile in any State, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in any other State, while, and solely by reason of being, so absent. Section 514 further provides that for the purposes of taxation in respect to personal property of any such person by a State, of which such person is not a resident or in which he is not domiciled, personal property shall not be deemed to be located or to be present in or to have a situs for taxation in such State. However, nothing contained in section 514 prevents taxation by any State of personal property used in or arising from a trade or business, if the State otherwise has jurisdiction.

It is our understanding that the bill is designed to prevent the taxation by a State of the personal property of a serviceman which remains with his family in a State (which could not have taxed such property under section 514 so long as he was stationed in such State) after transfer of the serviceman overseas or to a post in a different State to which he did not or could not take his family.

The Soldiers' and Sailors' Civil Relief Act was designed to afford broad protection to persons while in military service. Ex-

cept for article IV, relating to the guarantee of certain commercial life insurance premiums, the provisions of the act are not administered by the Veterans' Administration, although our loan assistance activities are sometimes affected if the veteran has reentered the service. Most of the provisions of the act, including section 514, are construed and enforced by the courts in individual cases.

It is noted that the text of the bill has been amended as recommended by the Secretary of the Army in his report of July 24, 1962, to the chairman of the Committee on Veterans' Affairs, House of Representatives, and, as so amended, the bill would not be objectionable to the Department of Defense. As we indicated in our report to the House committee, a copy of which is enclosed for your ready reference, the Veterans' Administration defers to the views of the Departments of Defense and Justice as to the merits of the proposed legislation.

Advice was received from the Bureau of the Budget with respect to a similar report on this proposal to the House Committee on Veterans' Affairs that there was no objection to the presentation of such report from the standpoint of the administration's program.

Sincerely,

W. J. DRIVER,
Deputy Administrator
(For and in the absence of J. S. Gleason, Jr.,
Administrator).

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., August 31, 1952

HON. LISTER HILL,
Chairman, Committee on Labor and Public Welfare,
U.S. Senate, Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This is with reference to your request

of August 28, 1962, requesting the views of this office with respect to H.R. 9747, a bill to amend section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended.

For the reasons set out in the report which the Department of the Army, on behalf of the Department of Defense, is submitting on this bill, the Bureau of the Budget would favor the enactment of H. R. 9747.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

DEPARTMENT OF THE ARMY,
Washington, D.C., September 4, 1962.

HON. LISTER HILL,
Chairman, Senate Labor and Public Welfare Committee,
U. S. Senate.

DEAR MR. CHAIRMAN: Reference is made to your recent request to the Secretary of Defense for the views of the Department of Defense with respect to H.R. 9747, 87th Congress, a bill to amend section 514(1) of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended. The Department of the Army has been assigned responsibility for expressing the views of the Department of Defense on this bill.

The title of the bill states its purpose. The Department of the Army on behalf of the Department of Defense favors the bill as passed by the House of Representatives.

The existing provisions of section 514(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 574) as they relate to the taxation of personal property, presently provide that "for the purposes of taxation in respect of any person, or his personal property, * * * by any State, territory, possession,

or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State * * *, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State * * *, while, and solely by reason of being, so absent [; and] for the purposes of taxation in respect of the personal property * * * of any such person by any State * * * of which such person is not a resident or in which he is not domiciled, * * * personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, territory, possession, or political subdivision, or district." Section 514(1) contains a proviso to allow the taxation of personal property used in or arising from a trade or business. Under the amendment proposed in H.R. 9747 personal property which has acquired a tax exempt status under the present provisions of section 514(1) would retain this status while it was owned by a person in the military service who is not a resident of or domiciled in the political unit where the property is located. H.R. 9747 would not extend the present protection afforded service personnel under section 514(1) but would only clarify the present status of the law that the tax exempt status of the personal property of a serviceman is based upon the serviceman's absence from his State of residence or domicile in compliance with military or naval orders and not his presence in a State in compliance with military or naval orders. In at least one State, Virginia, the political subdivisions thereof are presently attempting to impose a personal property tax on the property of nondomiciliary service personnel which is left in the political subdivision after the serviceman is transferred elsewhere. At the present time a case, *United States and Captain Harold S. Bottomley, Jr., USN* v. *Arlington County* is being litigated. This case involves an attempt by Arlington County, Va., to impose a personal property tax on the property of a Navy captain which was left in Arlington County when the captain was transferred to the command of a vessel which was deployed in

the Far East. H.R. 9747 would clearly make the personal property in situations similar to the present court case nontaxable.

For the foregoing reasons, the Department of the Army on behalf of the Department of Defense recommends that the bill be favorably considered.

Enactment of this legislation will cause no apparent increase in budgetary requirements of the Department of Defense.

This report has been coordinated in the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely yours,

CYRUS R. VANCE,
Secretary of the Army.

No. 610

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1968

JOHN L. SULLIVAN, TAX COMMISSIONER
OF THE STATE OF CONNECTICUT, ET AL.,

Petitioners,

-vs-

UNITED STATES OF AMERICA
and
LIEUTENANT STANDLEY D. SCHUMAN,
U.S.N., ET AL.,

Respondents.

BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITIONERS' PETITION FOR WRIT OF CERTIORARI

STATE OF ARIZONA

GARY K. NELSON
The Attorney General
159 Capitol Building
Phoenix, Arizona 85007

NO. 610

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BRIEF OF AMICUS CURIAE IN SUPPORT
OF PETITIONERS' PETITION
FOR WRIT OF CERTIORARI

TO THE HONORABLE SUPREME COURT OF
THE UNITED STATES:

STATEMENT OF POSITION

Comes now the State of Arizona, and files this brief as amicus curiae in support of the Petitioner, the State of Connecticut, for a Writ of Certiorari, for the reversal of the

final judgment of the United States Court of Appeals, and for the relief prayed by the Petitioner herein.

For its argument and conclusion, the State of Arizona concurs in the position taken by the amici curiae brief filed by the State of Texas and twenty-eight other undersigned states and hereby adopts that brief as its own.

Respectfully submitted,

STATE OF ARIZONA

GARY K. NELSON
The Attorney General

JAMES D. WINTER
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159 Capitol Building
Phoenix, Arizona 85007

Attorneys for the
State of Arizona

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	4
Part One: Argument in support of the judgment below	7
Introduction and summary of argument	7
Section 514 of the Soldiers' and Sailors' Civil Relief Act precludes the application of Connecticut sales and use taxes to servicemen who are there solely by reason of military orders	13
I. The wording of Section 514 is not restricted to ad valorem taxes but encompasses any tax measured by the value of personal property	13
II. The decision below properly implements the statutory purpose of preventing multiple taxation of servicemen's personal property	18
III. The statutory rule that a serviceman's property is deemed to be located at his domicile bars the application of Connecticut sales and use taxes	27
IV. The suggested difficulties of administering an exemption from sales and use taxes are neither germane nor proven	31
Part Two	37

CITATIONS

Cases:	
Adams Mfg. Co. v. *Storen*, 304 U.S. 307	30
Agricultural Bank v. *Tax Commission*, 392 U.S. 339	9
Avco Mfg. Corp. v. *Connelly*, 145 Conn. 161, 140 A. 2d 479	9, 17

336-943—69——1

Cases—Continued

	Page
Boone v. *Lighter*, 319 U.S. 561	26
California v. *Buzard*, 382 U.S. 386	11, 15, 19, 22, 23, 26, 39, 42
Carson v. *Roane-Anderson Co.*, 342 U.S. 232	27
Christian v. *Strange*, 96 Ariz. 106, 392 P. 2d 575	34
Comptroller of Treasury v. *Crofton Co.*, 198 Md. 398, 84 A. 2d 86	17
Dameron v. *Brodhead*, 345 U.S. 322	19, 23, 25, 31, 39
Federal-Land Bank v. *Bismark Co.*, 314 U.S. 95	27
Freeman v. *Hewit*, 329 U.S. 249	30
Gwin, etc., Inc., v. *Henneford*, 305 U.S. 434	30
Halliburton Oil Well Co. v. *Reily*, 373 U.S. 64	17
Henneford v. *Silas Mason Co.*, 300 U.S. 577	17
Herman M. Brown Co. v. *Johnson*, 248 Iowa 1143, N.W. 2d 134	17
LeMaistre v. *Leffers*, 333 U.S. 1	11, 26
N.J. Ins. Co. v. *Div. of Tax Appeals*, 338 U.S. 665	27
Niagara Junction Ry. Co. v. *Creagh*, 2 App. Div. 229, 154 N.Y.S. 2d 299	17
Pittman v. *Home Owners' Corp.*, 308 U.S. 21	27
Stetson v. *Sullivan*, 152 Conn. 649, 211 A. 2d 685	9
United States v. *Arlington County, Commonwealth of Virginia*, 326 F. 2d 929	5, 15, 40
Constitution and Statutes:	
Act of July 3, 1944, c. 397, 58 Stat. 722	8
Buck Act, 54 Stat. 1059, 4 U.S.C. 105, *et seq.*:	
4 U.S.C. 105, *et seq*	36, 38
4 U.S.C. 107(a)	5, 36
Soldiers' and Sailors' Civil Relief Act of 1940, c. 888, 54 Stat. 1178	4, 7
Soldiers' and Sailors' Civil Relief Act Amendment of 1942, c. 581, 56 Stat. 769, as amended, 50 U.S.C. App. 574:	
§ 514	*passim*
§ 514(1)	2, 8
§ 514(2)	4, 15, 17, 19
Public Law 87-771, 76 Stat. 768	15, 40
Uniform Commercial Code, Section 2-401(2)	29
State Statutes and Regulations:	
Code of Ala. (1958) Tit. 51, § 786(4)	30
Ariz. Rev. Stat. Ann. § 42-1321	30

State Statutes and Regulations—Continued

	Page
Calif. Rev. and Tax. Code:	
§ 6092	35
§ 6359.5	34
§ 6362	33
§ 6386	34
Colo. Rev. Stat. (1963) § 138–5–14	30
Conn. Gen. Stat.:	
§ 12–407	28
§ 12–407(7)	29
§ 12–407(14)	27
§ 12–408	9
§ 12–410(1)	35
§ 12–411	9
§ 12–412(c), (h)	33
§ 12–412(u), (v)	34
§ 12–430(5)	23
§ 12–432	26
§§ 12–406 through 12–432a	4
D.C. Sales Tax Reg. Sec. 704, C.C.H. D.C. Tax Rep. ¶ 60–206	33
Fla. Sales Tax. Rule 318–1.38, C.C.H. Fla. Tax Rep. ¶ 60–214	35
Code of Ga. Ann.:	
§ 92–3403(a)	33, 34
§ 92–3409(a)	35
Idaho Code tit. 63, § 3621	24
Ill. Rev. Stat., tit. 120:	
§ 441	33, 35
Kans. Stat. Ann., tit. 79:	
§ 3606(b)	33
§ 3606(g)	33
§ 3602(k)	35
Ky. Rev. Stat. (1953) § 139.480	34
Mass. Gen. Laws, ch. 64H:	
§ 6	30
§ 6(e)	33
§ 6(l)	33
§ 6(m)	34
§ 7(c)	24
§ 36(m)	33
§ 38	35

State Statutes and Regulations—Continued

	Page
Md. Sales Tax Rule 40 (1947), C.C.H. Md. Tax Rep. ¶ 60–241	35
Me. Rev. Stat. Ann. § 36–1760	33
Me. Sales Tax Reg. No. 1, C.C.H. Me. Tax Rep. ¶ 60–206	35
Minn. Stat. Ann. (1962):	
§ 297A.11	35
§ 297A.24	24
Vernon's Ann. Mo. Stat. § 144.210	35
Rev. Stat. of Nebr. tit. 77, § 2704	24
N.J. Stat. Ann., 32B:	
§ 54.8(a)	33
§ 54.9(b)	33
§ 54.11(b)	24
§ 54.12	35
N.Y. Tax Law:	
§ 1115	33
§ 1115(a)	34
§ 1116	33
§ 1118(7)(a)	24
§ 1132(c)	35
Okla. Stat. Ann. tit. 68, § 1305(b)	34
Penn. Tax Reg. 208, Nov. 1, 1965, C.C.H. Penn. Tax Rep. ¶ 60–260	33
Purdon's Penn. Stat. Ann. Tit. 72:	
§ 3403–203(e)	33
§ 3403–203(m)	33
§ 3403–203(v)	33
§ 3403–546	35
Rev. Civ. Stat. of Texas (1960) tit. 122A:	
§ 20.04	33, 35
Texas Tax Rul. No. 95–0.30, Sept. 18, 1961, C.C.H. Texas Tax Rep. ¶ 60–204	33
Va. Code:	
§ 58–441.6	34
§ 58.441.6(r)	30
§ 58–441.8	24
§ 58–441.17	35
Rev. Code of Wash. Ann. § 82.08.030(21)	34
Miscellaneous:	
94 Ala. Atty. Gen. Q. Rep. (1959)	17
122 Ala. Atty. Gen. Q. Rep. (1966)	17

Miscellaneous—Continued

	Page
Brief for the Petitioner, *Dameron* v. *Brodhead*, No. 302, October Term, 1952	39
Buehler, *Personal Property Taxation* (1939)	21
California Sales Tax, Counsel Op., July 21, 1959, C.C.H. Calif. Tax Rep. ¶ 60–202.39	33
Fowler, *Modern English Usage* (2d ed. 1965)	14
H. Rep. No. 1267, 76th Cong., 1st Sess	36
H. Rep. No. 2198, 77th Cong., 2d Sess	18, 25
H. Rep. No. 1514, 78th Cong., 2d Sess	8, 25
H. Rep. No. 565, 89th Cong., 1st Sess	21, 24
H. R 4733, 78th Cong., 2d Sess	8
Hellerstein, *Cases and Materials on State and Local Taxation* (3d ed. 1969)	21, 24
Op. of Atty. Gen. of Louisiana to Atty. for Coll. of Rev. August 6, 1937, C.C.H. La. Tax Rep. ¶ 60–2010	33
New Jersey Automotive Bulletin, No. 1 ¶ 03, C.C.H. N.J. Tax Rep., Tax Rep. ¶ 94–086	17–18
Op. of Atty. Gen. of N.Y., C.C.H. N.Y. Tax Rep. ¶ 40–220.18	33
Pennsylvania Sales and Use Tax Regulation No. 157, par. 2(d), 2 C.C.H. Pa. Tax Rep., ¶ 64–157	18
S. Rep. No. 1625, 75th Cong., 3d Sess	36
S. Rep. No. 1558, 77th Cong., 2d Sess	18, 25
S. Rep. No. 959, 78th Cong., 2d Sess	8
S. Rep. No. 2182, 87th Cong., 2d Sess	16
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Va. Atty. Gen. Rep. July 21, 1966, Item 5, C.C.H. Va. Tax Rep., ¶ 200–109	18
Wyo. Atty. Gen. Op. (1966) C.C.H. Wyo. Tax Rep. ¶ 200–126	18
Wyo. Atty. Gen. Ops. (1941–1947)	17

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 610

JOHN L. SULLIVAN, TAX COMMISSIONER OF THE STATE OF CONNECTICUT, ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the district court (R. 28A–43A) is reported at 270 F. Supp. 236. The opinion of the court of appeals (R. 47A–59A) is reported at 398 F. 2d 672.

JURISDICTION

The judgment of the court of appeals was entered on July 10, 1968 (R. 60A). The notice of appeal was filed on July 30, 1968, and the jurisdictional statement was filed on October 7, 1968 (R. 3A, 4A). Probable jurisdiction was noted on January 13, 1969 (R. 61A). The jurisdiction of this Court rests on 28 U.S.C. 1254(2).

QUESTION PRESENTED

Whether Section 514 of the Soldiers' and Sailors' Civil Relief Act prohibits the imposition of Connecticut sales and use taxes on the purchase or use of personal property in the State by servicemen on active duty who are resident and domiciled in States other than Connecticut and absent from such States solely pursuant to military orders.

STATUTE INVOLVED

Soldiers' and Sailors' Civil Relief Act of 1940, c. 888, 54 Stat. 1178:

> SEC. 514 [as added by Sec. 17, Soldiers' and Sailors' Civil Relief Act Amendments of 1942, c. 581, 56 Stat. 769, 777; and as amended by Sec. 1, Act of July 3, 1944, c. 397, 58 Stat. 722; and Act of October 9, 1962, P.L. 87-771, 76 Stat. 768]:
>
> (1) For the purposes of taxation in respect of any person, or of his personal property, income or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territ ry, possession, or political subdivision of any of the foregoing, or in District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason

of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district. Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders: *Provided,* That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

336-943—69——2

(2) When used in this section, (a) the term "personal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *Provided*, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.

(50 U.S.C. App. 574.)

The Connecticut Education, Welfare and Public Health Tax Act, Conn. Gen. Stat. (Rev. 1958), c. 219, Secs. 12–406 through 12–432a, are reproduced in the Appendix to appellants' brief at pp. 2B–43B.

STATEMENT

This is an appeal from the decision of the Court of Appeals for the Second Circuit (R. 47A–59A), which affirmed the judgment of the District Court for the District of Connecticut (R. 44A) that Section 514 of the Soldiers' and Sailors' Civil Relief Act,[1] forbids application of the Connecticut sales and use tax statute[2] to servicemen on active duty who reside and are domiciled in States other than Connecticut and who are absent from such States solely pursuant to military orders.

---

[1] Soldiers' and Sailors' Civil Relief Act of 1940, c. 888, 54 Stat. 1178, as added by Section 17 of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, c. 581, 56 Stat. 769, 777, as amended (50 U.S.C. App. 574).

[2] The Connecticut Education, Welfare, and Public Health Act, as amended, II General Statutes of Connecticut, 1958, Sections 12–406 through 12–432a.

The United States instituted this action against the appropriate Connecticut officials because of its interest, as sovereign, in insuring the enforcement of the protections which Congress provided members of the armed forces in the Soldiers' and Sailors' Civil Relief Act. See *United States* v. *Arlington County, Commonwealth of Virginia*, 326 F. 2d 929, 931–933 (C.A. 4). Lieutenant Stanley D. Schuman joined in the action as a plaintiff on his own behalf and as a representative of the class of members of the armed forces present on active military service, but not resident or domiciled, in the State of Connecticut. The district court dismissed Lieutenant Schuman's claim on the grounds that the taxes assessed against him did not involve the requisite jurisdictional amount and he had not brought a true class action (R. 41A–43A); no appeal was taken (R. 48A, n. 1). By agreement, appellants continue to collect the taxes from the class of nonresident servicemen in question pending appeal. These taxes will be refunded if the judgment of the district court is ultimately sustained. (R. 48A, n. 2.)

The taxes in question are those imposed on the purchase or use for nonbusiness purposes of personal property in Connecticut. None of the facts are in dispute. Most servicemen's day-to-day purchases in Connecticut of tangible personal property, such as food, clothing, toilet articles and other personal items, are made at military exchanges and commissaries operated by the armed services on military installations (R. 16A), and are not subject to Connecticut tax (4 U.S.C. 107(a)).

The applications of the Connecticut statute are illustrated by several examples set forth at trial. Lieutenant Stanley D. Schuman of Nebraska and Commander Kent J. Carroll of Michigan both purchased used motor boats in Connecticut from nondealers. The Connecticut Tax Commissioner assessed a tax of $21 and interest of $.53 against Schuman; he paid the tax under protest. Carroll refused a demand that he pay a tax of $171.50; the Tax Commissioner threatens to assess and collect the tax. Commander Clyde H. Schaffer of Pennsylvania purchased a new car from a Connecticut dealer who collected the sales tax of $61.08. (R. 14A–16A.)

In August 1966 Commander Jerome W. Roloff of Wisconsin bought a used car in Florida, where he was then stationed, and paid a sales tax of $36.50 there. When he subsequently was transferred to Connecticut, and registered his car there, he was required to pay the difference of $27.38 between the Florida sales tax and the Connecticut use tax. (R. 17A–20A.)

Commander William L. Foster of Texas purchased a new car from a Connecticut dealer. Although at the same time Commander Foster registered it in Texas, paying a Texas sales tax of $35.92 as a prerequisite to registration, the dealer collected the full Connecticut use tax of $62.85, after the Legal Department of the Connecticut State Department of Motor Vehicles advised Commander Foster that he had to pay the Connecticut use tax without any credit for the Texas tax. (R. 21A–27A.)

The district court held that Section 514 of the Soldiers' and Sailors' Civil Relief Act bars the collection of Connecticut sales and use taxes from any serviceman who is a resident and domiciliary of another State (R. 44A). The Court of Appeals for the Second Circuit unanimously affirmed (R. 60A), and this Court, on January 13, 1969, noted probable jurisdiction of Connecticut's appeal.

PART ONE: ARGUMENT IN SUPPORT OF THE JUDGMENT BELOW

INTRODUCTION AND SUMMARY OF ARGUMENT

The Soldiers' and Sailors' Civil Relief Act of 1940 was adopted to promote and strengthen the national defense by suspending enforcement of certain civil liabilities for persons serving in the armed forces. One of the primary functions of the statute is to relieve military personnel of potential multiple State taxes relating to their income and personal property which might accrue because orders require their presence in States other than that of their residence or domicile.

This tax exemption is implemented by Section 514 of the Act,[3] which defines the residence of servicemen,

[3] As originally enacted, the Soldiers' and Sailors' Civil Relief Act of 1940, c. 888, 54 Stat. 1178, contained no cognate of Section 514. That section was added by Section 17 of the Soldiers and Sailors' Civil Relief Act Amendments of 1942, c. 581, 56 Stat. 769, 777. However, the 1942 Act added only the rules that no residence or domicile was to be gained or lost due to military service and that compensation for military service would not constitute income earned within the State in which the non-resident serviceman was stationed. Subsequent to the enactment of the 1942 Act, questions were raised regarding the effect of Section 514 upon personal property taxes; clarifying

the source of their income, and the situs of their property for the purpose of exempting them from certain forms of taxation by the States in which they are stationed. The exemption is granted by a statutory mechanism (Section 514(1)) which provides that a serviceman "shall not be deemed to have lost a residence or domicile in any State * * * solely by reason of being absent therefrom in compliance with military * * * orders" and that he shall not be deemed "to have acquired a residence or domicile in * * * any other State * * * solely by reason of being, so absent."

Section 514(1) then goes on to spell out two tax consequences of this statutory definition of a serviceman's residence. For the purposes of income taxation by a State or its subdivision, "compensation for military * * * service shall not be deemed income * * * from sources within" any State "of which such person is not a resident." For the purposes of taxation "with respect to personal property, or the use thereof," personal property "shall not be deemed * * * to have a situs for taxation" in any such State. The effect of the latter part of the statute is to prohibit such a State from imposing "taxation in respect of * * * personal property" which is based either upon the location, presence, or situs of personal property in the taxing jurisdiction.

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legislation was proposed in 1944. H.R. 4733, 78th Cong., 2d Sess. To resolve these doubts, Congress, by the Act of July 3, 1944, c. 397, 58 Stat. 722, added to Section 514 the rule that personal property was not to be deemed to have a situs for taxation in the State in which a non-resident serviceman was stationed. See H. Rep. No. 1514, 78th Cong., 2d Sess., pp. 1–2, and S. Rep. No. 959, 78th Cong., 2d Sess., pp. 1–5.

The issue presented by this case is whether Section 514 forbids the imposition of Connecticut sales and use taxes upon servicemen who are in that State solely by reason of military orders. Like many States, Connecticut has an integrated sales and use tax. It requires the payment of a 3½ percent tax on most retail sales of tangible personal property, and a use tax is imposed at the same rate on the "storage, use or other consumption" in Connecticut of tangible personal property purchased from a retailer for such purposes. The legal incidence of these taxes falls on the consumer, since the retailer, who pays the tax to the State, is required in turn to collect the tax from the customer. Conn. Gen. Stat. Section 12–408 (1), (2), and (4) (App. Br. 9B–11B).[4] Any user is directly liable for the tax, unless the property was acquired from a Connecticut retailer who collected the tax. Section 12–411 (1) through (3). (App. Br. 14B–15B). See, generally, *Stetson* v. *Sullivan,* 152 Conn. 649, 211 A. 2d 685.

Appellants and the *amici curiae* who support them advance two statutory arguments in support of their position that Section 514 is too narrow to forbid such

[4] Appellants' contention that the Connecticut sales tax falls on the seller, *i.e.*, that it is a vendor rather than a vendee tax (Br. 10), is directly contrary to *Avco Mfg. Corp.* v. *Connelly,* 145 Conn. 161, 140 A. 2d 479, and *Agricultural Bank* v. *Tax Commission,* 392 U.S. 339, 346–348. Therefore, there is no occasion, in the context of this case, for this Court to decide, as California and Illinois urge in their *amicus* brief (pp. 9–13), what effect Section 514 might have on sales taxes whose incidence is on the vendor.

State sales and use taxes. The first contention is that the phrase "taxation in respect of * * * personal property"—which of course defines the scope of Section 514 for present purposes—encompasses only ad valorem taxes and fails to reach sales and use taxes. Their second claim is that the mechanism of the statute—the provision that the out-of-State serviceman's property is deemed to be without a situs for taxation in Connecticut—is insufficient to bar a sales tax because, they assert, this levy is imposed on the sales transaction without regard to the presence of the property in Connecticut.

In this brief we shall review the language of the statute, the underlying Congressional purposes, and the construction which this Court has accorded it. Each of these considerations, we submit, demonstrates that the district court and the court of appeals correctly decided this case.

Connecticut's sales and use taxes easily fit within Section 514, which forbids "taxation in respect of * * * personal property." As the court of appeals observed (R. 52A), the statutory phrase has "a generous reach." It indicates that Congress intended to include all taxes which pertain or relate to personal property, such as the sales and use taxes in question.

Significantly, the statute contains three explicit references to "use" taxes, and one to "excises". These appear in contexts which strongly suggest that Congress intended that the statute encompass "excises", *i.e.*, sales taxes, and taxes imposed on the "use" of personal property.

Connecticut's statute taxes only transactions where the buyer uses or takes possession of the property within Connecticut. Because Section 514 deems the serviceman's possession to be in his home State, the mechanism of Section 514 necessarily bars the Connecticut tax.

To hold otherwise would be contrary to the purposes expressed in the legislative history and decisions of this Court. The reference in Section 514 to "taxation in respect of * * * personal property" would have diminished practical impact if it were restricted to ad valorem taxes. And, as this record shows, the relief Congress sought to provide from the threat of double taxation would be effectively vitiated in an important area of taxation, if the decision below is reversed. Congress, moreover, on each of the two occasions when the precise limits of the provision were questioned, amended Section 514 in a manner which emphasized its wide scope, and there is ample evidence of a Congressional desire to have any doubts resolved in favor of granting the nonresident servicemen immunity to taxation in jurisdictions where his military orders have taken him.

This Court, too, has insisted that the Act must be read "with an eye friendly to those who dropped their affairs to answer their country's call." *LeMaistre* v. *Leffers,* 333 U.S. 1, 6. Most recently, in *California* v. *Buzard,* 382 U.S. 386, 393, this Court

stated that "The very purpose of § 514 * * * was to relieve * * * [the serviceman] of the burden of supporting the governments of the States where he was present solely in compliance with military orders." There the Court ruled that the Act exempted a nonresident from an annual California tax of 2 percent on the value of an automobile brought into the State from without. The rationale of that decision requires that Section 514 be viewed as relieving servicemen from the Connecticut sales and use tax since those taxes also serve to defray the general expenses of local government.

The assertions of appellants and two of the *amici curiae* that it would be difficult to administer an exemption from sales tax are not germane to the question of statutory construction presented here. At all events, there is no reason to believe that the administration of the exemption from sales and use taxes accorded by Section 514 would create any more difficulties than presently exist in administering the multitude of exemptions granted by all sales and use tax statutes. The procedures now used by the States for identifying those entitled to exemption under such laws are indeed well suited to application to the identification cards that the Department of Defense, as a matter of course, issues servicemen.

ARGUMENT

SECTION 514 OF THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT PRECLUDES THE APPLICATION OF CONNECTICUT SALES AND USE TAXES TO SERVICEMEN WHO ARE THERE SOLELY BY REASON OF MILITARY ORDERS

I. THE WORDING OF SECTION 514 IS NOT RESTRICTED TO AD VALOREM TAXES BUT ENCOMPASSES ANY TAX MEASURED BY THE VALUE OF PERSONAL PROPERTY

1. Section 514 of the Soldiers' and Sailors' Civil Relief Act provides that "[f]or the purposes of taxation in respect of the personal property" of a serviceman by a State in which he is neither resident or domiciled, his "personal property shall not be deemed to be located or present in or to have a situs for taxation in such State." The consequence of this provision is to forbid a State or its subdivisions to impose a tax "in respect of" the serviceman's personal property, if the incidence of the tax is based on the location, presence, or situs of personal property in the taxing jurisdiction.

The initial problem concerns the scope of the statutory phrase "in respect of * * * personal property." This phase, we would agree, has no single, accepted meaning. But this does not imply that the import of the phrase as used in Section 514 is doubtful or uncertain. On the contrary, the very imprecision of the phrase demonstrates that Congress did not intend to confine Section 514 to ad valorem taxation or any other single form of levy.

The usual use of a periphrasis such as "in respect of" occurs when the draftsman is unable to conceive

of a single preposition or group of prepositions that fully expresses his intent. The closest one word definition of the phrase would be "about" or "regarding" or "respecting". Cf. Fowler, *Modern English Usage*, 445-446, 512, 521 (2d ed. 1965). Thus the phrase "in respect of" has the broadest prepositional meaning, and the statutory phrase "taxation in respect of * * * personal property" has, as the court of appeals observed (R. 52A), "a generous reach".

In consequence, the phrase "taxation in respect of * * * personal property" is hardly what one would have expected Congress to use if it intended to restrict the exemption to ad valorem taxation. Rather, the use of the phrase connotes an intent on the part of Congress to exempt servicemen from all taxes pertaining to personal property, except those imposed by his home State. The exemption is to apply to any tax measured in any manner by the value of personal property whatever form the particular tax might take, so long as its incidence is upon the nonresident servicemen whose presence in the taxing jurisdiction is required by military orders.

Sales and use taxes generally, and Connecticut's in particular, plainly fit this description. It is evident from our discussion (*supra*, p. 9) that they are levied at the time of acquisition or upon the use of personal property. And both the sales and use tax are computed as a percentage of the property's value which, in the case of a sale is its sales price. These basic characteristics indicate beyond doubt that both of these taxes fall within the definition of a tax "in respect of * * * personal property."

2. The far-reaching scope of the phrase "taxation in respect of * * * personal property" is further demonstrated by other provisions of Section 514, which limit or define its application. First, in order to except business property from the exemption granted by the statute, Congress provided expressly that "nothing contained in this section shall prevent taxation by any State * * * in respect of personal property *used* in or arising from a trade or business." (Emphasis supplied.) Second, Section 514(2) provides that "the terms 'taxation' shall include but not be limited to licenses, fees or *excises* imposed in respect to motor vehicles *or the use thereof.*" (Emphasis supplied.)

In each of these clauses Congress was seeking to limit the exemption that Section 514 otherwise would have granted. In the first, Congress sought to allow taxation of property that a serviceman acquired or used to carry on a business. In the second, Congress sought to remove a serviceman's exemption from registering his automobile in his host State, unless he had registered in his home State. See *California* v. *Buzard*, 382 U.S. 386, 392.

A further indication of the breadth of Section 514 is found in language that Congress, in 1962, added to the statute to prohibit the taxation of personal property left by a nonresident serviceman in a State upon his transfer from one duty station to another.[5] Expressly recognizing that it was only clarifying, and

[5] Act of October 9, 1962, P.L. 87-771, 76 Stat. 768. See, also, *United States* v. *Arlington County, Commonwealth of Virginia*, *supra*.

was not enlarging, the scope of the statute,* Congress added the following language to Section 514:

> Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, *or the use thereof*, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders * * *. (Emphasis supplied.)

The thrice repeated reference to use taxation removes any doubt that Congress thought the phrase "taxation in respect of * * * personal property" reaches use taxes. Each of those references, to be sure, appear in the contexts where Congress was dealing with taxes that are imposed annually. It may therefore be argued, particularly as to the provisions dealing with taxes on business property and on automobiles, that the word "use" was utilized only in reference to levies, such as ad valorem taxes, that are annual, unlike the "use" taxes in issue in this case. However, the 1962 amendment dealing with property a serviceman leaves behind when he is transferred from one jurisdiction to another seems to refute such an interpretation. Although that amendment was intended to deal with ad valorem taxes, the phrase "or the use thereof" was not necessary to this purpose. Without the phrase the statutory amendment would have fully achieved the purpose of barring ad valorem taxation on property left behind in such situations.

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*S. Rep. No. 2182, 87th Cong., 2d Sess., p. 1.

The addition of the words, if it is to have any meaning, should be interpreted as an indication that Congress went beyond the narrow problem in issue there and evidenced an awareness that "use" taxes such as Connecticut seeks to impose on servicemen in this case were also barred by Section 514.

The reference to "excises" in Section 514(2) equally shows an intent to reach sales taxes, for those are synonymous with the word "excise". But even if Section 514(2) did not have this latter reference, the reference to use taxes would demonstrate an intent to forbid sales taxes as well. The two types of taxation are complementary in most jurisdictions and are designed to provide equality of taxation between property acquired in State and out of State. See *Avco Mfg. Corp.* v. *Connelly, supra; Halliburton Oil Well Co.* v. *Reily,* 373 U.S. 64, 66; *Henneford* v. *Silas Mason Co.,* 300 U.S. 577, 581–583.[7] As the district court observed (R. 36A) in language adopted by the court of appeals (R. 53A), Connecticut "has merged the purposes and imposition of the sales and use taxes to such an extent that they are but one tax in practical effect."[8] Given the essential identity between sales and

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[7] See, *e.g.*, *Comptroller of Treasury* v. *Crofton Co.*, 198 Md. 398, 84 A. 2d 86; *Niagara Junction Ry. Co.* v. *Creagh*, 2 App. Div. 299, 154 N.Y.S. 2d 229; *Herman M. Brown Co.* v. *Johnson*, 248 Iowa 1143, 82 N.W. 2d 134

[8] At least one state authority, contemporaneously with the amendment of Section 514 to deal with taxes in respect of personal property, ruled that the statute barred use taxes. Wyo. Atty. Gen. Ops., p. 1056 (1941–1947). Subsequently, that authority, as well as others, have ruled that Section 514 bars both sales and use taxes. See, 94 Ala. Atty. Gen. Q. Rep., p. 27 (1959); 122 Ala. Atty. Gen. Q. Rep., p. 28 (1966); New Jersey

use taxes, in Connecticut and generally, it is inconceivable that Congress, in enacting Section 514, would have immunized servicemen from the use taxes, but not the sales taxes, of the host State.

II.

THE DECISION BELOW PROPERLY IMPLEMENTS THE STATUTORY PURPOSE OF PREVENTING MULTIPLE TAXATION OF SERVICEMEN'S PERSONAL PROPERTY

1. The construction of the statute that is urged above and the courts below adopted is entirely consistent with the purposes of Congress, while restriction of Section 514 to ad valorem taxation would work a substantial abridgment of the benefits Congress sought to confer on servicemen absent from their home States pursuant to military orders. Both responsible committees of Congress observed that Section 514 was (S. Rep. No. 1558, 77th Cong., 2d Sess., p. 11; H. Rep. No. 2198, 77th Cong., 2d Sess., p. 6) "designed to prevent multiple State taxation of the property and income of military personnel serving within various taxing jurisdictions through no choice of their own." Congress, however, did not restrict the operation of the statute to actual incidents of double

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Automotive Bulletin No. 1, ¶03, C.C.H. N.J. Tax Rep., par. 94–086; Pennsylvania Sales and Use Tax Regulation No. 157, ¶2(d), 2 C.C.H. Pa. Tax Rep., par. 64–157; Va. Atty. Gen. Rep., July 21, 1966, Item 5, C.C.H. Va. Tax Rep., ¶200–109; Wyo. Atty. Gen. Op. p. 52 (1966), C.C.H. Wyo. Tax Rep., ¶200–126. Each of these States, however, have joined in an *amicus* brief which urges the opposing view.

taxation. As this Court held in *Dameron* v. *Brodhead*, 345 U.S. 322, 326:

> Congress appears to have chosen the broader technique of the statute carefully, freeing servicemen from both income and property taxes imposed by any state by virtue of their presence there as a result of military orders. It saved the sole right of taxation to the state of original residence whether or not that state exercised the right.

Then in *California* v. *Buzard*, 382 U.S. 386, 393, the Court, in construing the motor vehicle license fee proviso of Section 514(2)(b), recognized that "The very purpose of § 514 * * * was to relieve * * * [the serviceman] of the burden of supporting the governments of the states where he was present solely in compliance with military orders."

These purposes, of course, require an immunity from ad valorem taxes, since such imposts do pose a threat of double taxation. They are levied annually on the value of all personal property within the taxing jurisdiction on a given day. Because a serviceman might move from one State to another within a single year, he might in one year be present in each of several taxing jurisdictions on tax day. But for the exemption of Section 514, his property might well be subjected to an ad valorem tax in more than one State during the same year.

Sales and use taxation provide a threat of double taxation to at least the same degree. Although the sales tax is imposed only upon the acquisition of property, the use tax is imposed whenever property is brought

into and used within a State after being acquired in another jurisdiction. The very purpose of having a use tax as a complement to sales taxation is to eliminate tax avoidance through the purchase of property in one State for use in another having a higher tax.

In enacting Section 514, Congress was legislating for an army composed for the most part of temporary soldiers—those who at the termination of their service would return to their home States. A serviceman's absence, and the absence of his property from the home State, would have at least exempted him from the ad valorem taxes of his home State for the period of that absence even without Section 514. But upon return he would be subject to a use tax on property acquired during military service and brought home upon discharge. The congressional purpose to confer a broad immunity against double taxation could, therefore, not be fully achieved unless the exemption goes to sales and use taxes as well as to ad valorem levies of States where the serviceman is present solely by reason of his orders.

The propriety of this conclusion is all the more apparent when consideration is given to the relative incidents and importance of sales and use taxes and ad valorem taxes. Each of these taxes is measured by the value of property. The essential distinction between these two types of taxes is that a sale or use tax is imposed only once upon an item, either upon its acquisition or its first use within the jurisdiction. An ad valorem tax, on the other hand, is an annually recurring levy. But this difference should be of little practical significance for purposes of Section 514.

Further, the multiple exemptions and the difficulties of enforcement that have historically attended ad valorem taxes brought such imposts into general disfavor well before the time, in 1942, when Section 514 was added to the Soldiers' and Sailors' Civil Relief Act. "Modern nations have as a result almost universally shunned general property taxation * * *." Buehler, *Personal Property Taxation* 117 (1939). See, also, Hellerstein, *Cases and Materials on State and Local Taxation* 142 (3d ed. 1969.) Indeed, by 1942, a variety of jurisdictions were replacing or supplementing ad valoren personal property taxes with sales and use taxes. Cf. Tax Policy League, *Symposium on Property Taxes* (December 27–29, 1939, Philadelphia, Pennsylvania) pp. 40, 53, 110, 132–133.[9] And, by that time, sales and use taxes apparently had surpassed ad valorem taxes in importance as a source of revenue to State authorities.[10]

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[9] As of 1942, 22 States had a general sales tax, and 18 of these had a complementary use tax. 3 State Taxation of Interstate Commerce, H. Rep. No. 565, 89th Cong., 1st Sess., p. 610.

[10] Although exact statistics do not appear to be available, it is clear that by 1942 sales tax revenues were of considerable significance. One available study was prepared by the Tax Research Department, Commerce Clearing House, Inc., *Tax Systems, A Year Book of Legislative and Statistical Information Including All the States of the United States and Certain Foreign Data* (11th ed., January, 1948) p. 257. It reports that in 1941 State governments had total revenues of $4,450,000,000. $560,000,000, or over 12% of that total, are listed as coming from "general sales and use" taxes, a category that includes some minor taxes in addition to sales and use taxes. See *id.* at p. VI and pp. 9, 12, 34, 70, 102, 104, and 106. See, also, 3 State Taxation of Interstate Commerce, H. Rep. No. 565, 89th Cong., 1st Sess., p. 616, which shows that as of 1940 some

Against this background, a restriction of Section 514 to ad valorem taxes would require the view that Congress only granted nonresident servicemen immunity from a relatively less important tax pertaining to their personal property while allowing them to be subjected to sales and use tax liabilities. Plainly this could not be the case, for the legislative history and the decisions of this Court demonstrate that Congress intended the fullest possible exemption from the threat of double taxation "in respect of * * * personal property".

To adopt the view of the appellants and the *amici curiae* would, in addition, acknowledge that the States and their subdivisions remain free to exact from servicemen major contributions to State revenues, even though Congress, as this Court recognized in *Buzard*, plainly intended to relieve servicemen of that burden

13.8% of State tax collections resulted from sales and use taxation.

For the same year, C.C.H. reports that "property taxes" amounted to just under $200,000,000, or less than 5% of the total of State revenues. This latter figure includes ad valorem taxes on both real property and personal property, but it is believed that the States—as opposed to local governments—receive relatively little revenue from real property taxes.

For 1940 the Bureau of the Census reported local tax collections as being $4,497,000,000, some $4,170,000,000 of which were "property" taxes. See U.S. Bureau of the Census, 1962 Census of Governments, Volume 6, Report No. 4 pp. 45–46. It is believed that most of these collections were real property taxes. See Tax Policy League, *op. cit., supra*, p. 119. (The C.C.H. and Census statistics are not entirely comparable. For example, the C.C.H. report, at p. 257, reports that local tax collections in 1940 totaled $4,800,000,000, somewhat more than the amount reported by the Bureau of the Census.)

except as imposed by their home State. The similarity in functioning between the two types of taxes and their relative importance as revenue-gathering devices would, we submit, require the strongest legislative expression of purpose to grant exemption from one but to allow the other. It is clear, however, that Congress has not evidenced such an intent. As this Court has said (*California* v. *Buzard, supra,* 382 U.S. at 393), "[T]here is no persuasive evidence Congress meant state labels to be conclusive * * *."

2. The reality of the prospect of double sales and use taxation is fully demonstrated by this record. Commander Foster was in fact subjected to double taxation on the automobile he purchased in Connecticut, when Connecticut insisted on the collection of the full Connecticut use tax even though he had also paid the full sales tax required by Texas, his home State, when he registered his new car there. (R. 21A–27A.) [11] Commander Roloff was also taxed twice, al-

[11] Although Connecticut provides a credit where (Section 12–430(5)) "any article of tangible personal property has already been subject to a sales or use tax by any other state * * *.", it apparently construes the credit as not applying to someone in the position of Commander Foster. We therefore presume that the Texas tax was viewed as having been paid at the same time or subsequent to the event that gave rise to the Connecticut tax and, therefore, Commander Foster's car had not "already been subject" to the Texas tax at the time of the Connecticut tax became due.

This example demonstrates the defect in the contention the State of New York advances in its *amicus* brief (at pp. 17–18) that the problem of this case is already resolved by the grant of use tax credit for sales taxes paid in other States. Moreover, *Dameron* v. *Brodhead, supra,* is explicit in holding that only the home State can exercise its taxing power under Sec-

though he was only required to pay the difference between the tax he had paid Florida upon acquisition of his car and the amount he would have paid if he had acquired it in Connecticut.

At the time of trial here, Lieutenant Schuman, Commander Carroll, and Commander Shaffer had only been taxed once on their purchases of boats and a car. However, if the decision below is reversed, each of them remains subject to further taxation on their use of these chattels when they are transferred to other States by military orders. And nothing in Section 514 would bar their respective home States from

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tion 514. Thus, the granting of credits does not conform to the statute's denial of the basic power to tax.

In addition, the varying nature of the credits granted by the several States, ranging from full exemption to no credit at all, demonstrates why the solution of the multiple sales and use tax problem should not be left to the States for present purposes. Of the 44 States and the District of Columbia which have sales and use taxes, only the District of Columbia provides a complete exemption where a sales or use tax has been previously paid. Fifteen States provide a credit against their tax for the amount of sales or use tax paid in another State. Thirteen more States provide such a credit, but only if the State to which the tax was first paid gives a credit to buyers from the taxing State. (However, three of these thirteen States do not tax property first used elsewhere.) Ten additional States provide no credit, but exempt from tax property first used in another State. The other six States provide relief only for property brought into the State by new residents or businesses. See *e.g.*, H. Rep. No. 565, 89th Cong., 1st Sess., pp. 825–829; Hellerstein, *Cases and Materials on State and Local Taxation* (1969 ed.), p. 15; Idaho Code tit. 63, § 3621; Mass. Gen. Laws Ch. 64H § 7(c); Minn. Stat. Ann. (1962) § 297A–24; Rev. Stat. of Nebr. tit. 77, § 2704(4); N.J. Stat. Ann. 32B: § 54.11(b); N.Y. Tax Law § 1118(7)(a); Va. Code § 58–441.8.

taxing these items, when each returns to his respective domicile.

3. Even if this analysis is thought to leave any room for doubt, those doubts must be resolved in favor of the broad view of the exemption which is advanced here. The evolution of Section 514 demonstrates that every time the precise scope of the statute was open to question, Congress chose to broaden its applicability in order to accord to servicemen a wide freedom from State tax burdens, except those imposed by the home State. This fact is reinforced by the view of the responsible Congressional Committees, which stated, at the time of the original enactment in 1942, that "Any doubts that may arise as to the scope and application of * * * [the soldiers' and Sailors' Civil Relief Act] should be resolved in favor of the person in military service involved." S. Rep. No. 1558, 77th Cong., 2d Sess., p. 2; H. Rep. No. 2198, 77th Cong., 2d Sess., p. 2. And in 1944, this legislative purpose was restated by Congress when it amended the statute to make absolutely clear that servicemen were given "the same protections as to personal property taxes that they now have as to income taxes." H. Rep. No. 1514, 78th Cong., 2d Sess., p. 2.

This Court, moreover, when faced with questions regarding the precise limits of Section 514, has broadly construed it so as to confer upon servicemen a wide freedom from tax burdens "sav[ing] the sole right of taxation to [their] state of original residence," *Dameron* v. *Brodhead,* 345 U.S. 322, 326, and ruling that the Act must be read "with an eye

friendly to those who dropped their affairs to answer their country's call", *LeMaistre* v. *Leffers,* 331 U.S. 1, 6; *Boone* v. *Lightner,* 319 U.S. 561, 575. Like the California 2 percent "license fee" involved in *California* v. *Buzard, supra,* the Connecticut sales and use taxes serve to defray the general costs of local government.[12] As this Court unanimously recognized in *Buzard* the purpose of Section 514 (382 U.S. at p. 393) "was to relieve * * * [the serviceman] of the burden of supporting the governments of the states where he was present solely in compliance with military orders." Hence, under the *Buzard* rationale, there is no less compelling reasons for construing Section 514 to relieve servicemen from the 3½ per cent Connecticut sales and use tax than from the 2 percent California "license fee." These expressions provide a definitive refutation to any narrowing construction of Section 514, if servicemen are to have their statutory exemption from local tax burdens in the full sense that Congress intended.[13]

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[12] Section 12-432 of the Connecticut statutes (App. Br. 42B) specifies that all sales and use taxes are to be used for public health, welfare, and education.

[13] There is no foundation for the contentionof the *amici curiae* (Texas Br. 2-3) that Section 514, as an exemption statute, is to be narrowly construed. However valid that canon of construction may generally be, it obviously has no function in the face of the contrary congressional direction applicable here.

The authorities marshalled by appellants (Br. 18) for the proposition that immunities in favor of the federal government must be strictly construed are equally inapposite. Indeed, where this Court has considered federal statutes which confer immunity from State taxation, it has been emphasized that such immunities are not to "be frittered away" by restrictive

III.

THE STATUTORY RULE THAT A SERVICEMAN'S PROPERTY IS DEEMED TO BE LOCATED AT HIS DOMICILE BARS THE APPLICATION OF CONNECTICUT SALES AND USE TAXES

Under the terms of Section 514, personal property belonging to a nonresident serviceman is deemed not to be present, and to be without a situs for taxation, in any State where he is present solely by reason of military orders. Thus for the purposes of any "taxation in respect of * * * personal property," the serviceman's property does not gain a location in the host State by reason of his military service. The rationale of the Act is that but for military orders the property would be and therefore should be treated as though it is in the State of domicile.

This mechanism plainly operates to bar the imposition of a use tax, for such a tax may be imposed only to property that is used—*i.e.*, that is present—within the taxing jurisdiction. Connecticut's use tax, like that of many States, is "imposed on the storage, use or other consumption *in this state* of tangible personal property" (emphasis supplied), and the statute, in Section 12–407(14), defines the italicized words to mean "within the exterior limits of the state of Connecticut." The only possible interpretation of Section 514 in these circumstances is that it strips Connecticut of the jurisdictional basis for the imposition of its

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readings. *Federal Land Bank* v. *Bismarck Co.*, 314 U.S. 95, 99; see, also, *Carson* v. *Roane-Anderson Co.*, 342 U.S. 232, 235–236; *Pittman* v. *Home Owners' Corp.*, 308 U.S. 21, 31; *N.J. Ins. Co.* v. *Div. of Tax Appeals*, 338 U.S. 665, 675.

use tax. We do not understand appellants or the *amici* to argue otherwise.

They nevertheless contend (App. Br. 10–11; Texas amicus Br. 3–4) that the sales tax is a transactional tax, levied on the sales transaction and independent of the location of the property sold, and that therefore the mechanism of Section 514 is insufficient to reach the sales tax. There are two difficulties with this argument. The first is that an analysis of the Connecticut statute shows that the incidence of the tax depends on the situs of the property being in Connecticut, when the buyer receives it. The Connecticut tax is imposed on "the privilege of selling tangible personal property at retail", and the tax is measured at 3½ percent "of the gross receipts of any retailer from the sale of all tangible personal property sold at retail." The meaning of these phrases depends, of course, on the interpretation accorded the words "selling" and "sale". Section 12–407 defines these two critical words, to the extent here pertinent, to:

> mean and include: (a) Any transfer of title, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration; (b) any withdrawal, except a withdrawal pursuant to a transaction in foreign or interstate commerce, of tangible personal property from the place where it is located for delivery to a point in this state for the purpose of the transfer of title, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of the property for a considera-

> tion; * * * (f) a transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price; * * * [14]

The unifying characteristic of each of the events that may be a sale under this definition is the transfer of possession of the personal property [15] from the seller to the buyer. Whether the imposition of tax results from a transfer of title [16], exchange, barter, or any other of the events described in this definition, there must be a transfer of possession before the sale is completed, and the taxable event occurs. But at the very moment of transfer of possession to a nonresident serviceman, Section 514 operates to require that the event be treated as though the serviceman received the property in his home State.

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[14] A comparable definition of the word "purchase" is found in Section 12–407(7). (App. Br. 4B.)

[15] Subclause (h) of the definition includes "a transfer for a consideration" of the "occupancy of any room or rooms in a hotel or lodging house for a period of thirty consecutive calendar days or less." No question has heretofore been raised in this case as to the application of Section 514 to this aspect of the Connecticut statute. Appellants assert in their brief (at pp. 9–10) that this part of the Connecticut tax may be collected under Section 514. Whether this is correct depends on whether the right to occupy a hotel or motel is an interest in intangible personal property, which is within the scope of Section 514. Whatever may be the correct resolution of this point, it does not have any relevance to the situations in issue here, where it is clear that tangible personal property is transferred.

[16] See Section 2–401(2) of the Uniform Commercial Code, which states: "[u]nless otherwise explicitly agreed, title passes" when there is "performance with reference to the physical delivery of the goods * * *."

Thus, the transaction is in substance that described in subclause (b) of the definition, which speaks of the "withdrawal" of property from a storage place in Connecticut for purposes of delivery. The statute taxes, however, only those withdrawals intended "for delivery to a point in this State." Any other withdrawal, including any "pursuant to a transaction in foreign or interstate commerce" is outside the definition of "sale" and "selling". Since Section 514 of the Soldiers' and Sailors' Civil Relief Act deems the serviceman's possession to be taken in his home State, the application of Connecticut sales tax statute must be the same tax-free treatment as when the item is delivered from the Connecticut seller to an out-of-state location. Compare *Adams Mfg. Co.* v. *Storen*, 304 U.S. 307; *Gwin, etc., Inc.* v. *Henneford*, 305 U.S. 434; *Freeman* v. *Hewit*, 329 U.S. 249.[17]

But even if Connecticut's statute were not so worded, the same conclusion would hold true and the serviceman's acquisition must be deemed to have oc-

[17] Similar exemptions for interstate sales are found under many other State sales tax statutes. See *e.g.*, Code of Ala. (1958) tit. 51, § 786(4); Ariz. Rev. Stat. Ann. § 42-1321; Colo. Rev. Stat. (1963) § 138-5-14; Massachusetts—Mass. Gen. Laws, ch. 64H, § 6; Va. Code § 58-441.6(r).

curred outside Connecticut. To bifurcate a sales transaction into the acquisition and subsequent possession of the item acquired would be contrary to the policy embodied in Section 514. As this Court stated in *Dameron* v. *Brodhead,* 345 U.S. 322, 326, Congress in Section 514 "saved the sole right of taxation [of servicemen] to the state of [their] original residence." Nothing in the scheme of the statute nor its legislative history suggests that a serviceman is to be immune in his host State from taxes relating to his use of an item of personal property, but not from complementary taxes which relate to his acquisition of such property.[18] Therefore Section 514 must apply to both the sales tax and the compensating use tax.

IV.

THE SUGGESTED DIFFICULTIES OF ADMINISTERING AN EXEMPTION FROM SALES AND USE TAXES ARE NEITHER GERMANE NOR PROVEN

Appellants and two of the *amici curiae* contend that the decision below is inappropriate because, they assert, an exemption from sales and use taxes would be

[18] Appellant's challenge (Br. 24–27)—not made below—to the constitutionality of Section 514 as construed by the Second Circuit is controlled by *Dameron* v. *Brodhead*, *supra*, 345 U.S. at 324–325, where this Court sustained the constitutionality of Section 514 as a congressional exercise of power incident to the powers (United States Constitution, Art. I, Section 8) to declare war and support armed forces. The constitutional question is the same, whether decided in the context of an ad valorem tax, as in *Dameron*, or sales and use taxes, as here.

difficult to administer. We first observe that these claims have at best peripheral relevance to this case. The question here is the construction to be given Section 514 in light of the broad sweep of the Congressional purpose. The supposed difficulties of administering a particular exemption are matters for the Congress, which has enacted the exemption and has the authority to diminish it. Had Congress shown a concern for such difficulities, or in any manner expressed a view that such problems should provide guidance to the interpretation of Section 514, they would no doubt be pertinent considerations. But Congress did not do so and it is clear that the guide to construction must be the expression of legislative purpose to provide servicemen with a broad immunity from income and personal property taxation by jurisdictions that are not their homes.

This is not to say, however, that we believe the charges of administrative difficulty are well taken. Appellants did not voice these claims until oral argument before the court of appeals. That court did (R. 59A):

> not think these problems insurmountable, or even seriously burdensome. In fact, Connecticut has already exempted other groups from its sales and use taxes, and no ill effect from these exemptions has been brought to our attention.

Neither appellants nor any of the *amici* have added anything in this Court to what was said below.

As the court of appeals commented, *supra,* Connecticut already has many exemptions, and this is gen-

erally true of State sales and use tax statutes. Some exemptions are based on the status of the purchaser, such as those granted to charitable, educational and religious organizations [19] or to foreign nationals associated with embassies or consulates.[20] Others depend on the nature of article purchased; for example, Connecticut exempts sales of prescription medicines, newspapers, magazines, food products and the numerous other items from tax. (See Section 12–412, App. Br. 17B–22B.)[21] Yet others depend on the use to which the item will be put, and the grant of the exemption

[19] See, *e.g.*, Conn. Gen. Stat. Ann. tit. 12, § 412(h); Code of Ga. Ann. § 92–3403(a); Ill. Rev. Stat. tit. 120, § 441; Kans. Stat. Ann. tit. 79, § 3606(b); Me. Rev. Stat. Ann., § 36–1760; Mass. Gen. Laws Ch. 64H, § 6(e); N.J. Stat. Ann. § 32B: § 52.9 (b); N.Y. Tax Law, § 1116; Purdon's Penna. Stat. Ann. tit. 72, § 3403–203(e); Rev. Civ. Stat. of Texas (1960) tit. 122A, § 20.04.

[20] See, *e.g.*, Penn. Tax. Reg. 208, Nov. 1, 1965, C.C.H. Penn. Tax Rep. ¶60–260; Texas Tax Rul. #95–0.30, Sept. 18, 1961, C.C.H. Texas Tax Rep. ¶60–204; Op. of Atty. Gen. of La. August 6, 1937, C.C.H. La. Tax Rep. ¶60–204.10; Calif. Sales Tax, Counsel Op., July 21, 1959, C.C.H. Calif. Tax Rep. ¶60–202.39; D.C. Sales Tax Reg. Sec. 704, CCH D.C. Tax Rep. ¶60–206; Opinion of Atty. Gen. of N.Y., CCH N.Y. Tax Rep. ¶40–220.18 (motor fuel tax).

[21] For example, prescription drugs are exempt from sales tax in Maine (Me. Rev. Stat. Ann. § 36–1760) Massachusetts, Gen. Laws Ch. 64H, § 6(l); New Jersey (N.J. Stat. Ann. 354: 32B–8(a)); New York (N.Y. Tax Law, § 1115) and Pennsylvania (Purdon's Penna. Stat. Ann. tit. 72, § 3403–203(m)). Newspapers and magazines are exempt in California (Calif. Rev. and Tax Code § 6362); Kansas (Kan. Stat Ann. tit. 79, § 3606(g)); Massachusetts (Laws of Mass. Ann. Ch. 64H § 36(m)); Pennsylvania (Purdon's Penna. Stat. Ann. tit. 72, § 3403–203(v)). Religious articles are exempt from sales tax in Maine (Me. Rev. Stat. Ann. § 36–1760).

depends entirely on the purchaser's declaration of his purpose.[22]

The problem claimed here is in the alleged difficulty in devising suitable means of identifying servicemen[23] entitled to the exemption and in accounting for tax free sales by retailers. There is, however, no reason to believe that there would be any more difficulty in identifying servicemen entitled to the exemption than

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[22] See, *e.g.*, Conn. Gen. Stat. Ann. tit. 12, § 412(u)(v) (sales of personal property for incorporation into air or water pollution facilities); Calif. Rev. and Tax. Code § 6359.5 (sales of ice to be employed in packing food products for interstate shipment); Va. Code § 58–441.6 and N.Y. Tax Law § 1115(a) ("Tangible personal property purchased for use or consumption directly and exclusively in research and development in the experimental sense"); Okla. Stat. Ann. tit. 68, § 1305(b) (sales of agricultural fertilizer to a person who certifies in writing on a copy of the invoice that the material will be used in his farming business); Calif. Rev. and Tax. Code § 6386 (sales of construction materials to be used on structures attached to real estate outside of California); Mass. Gen. Laws Ch. 64H, § 6(m) (sales of books required for instruction in educational institutions are exempt); Rev. Code of Wash. Ann. § 82.08.030(21) (sales to nonresidents who intend to remove the goods from the State immediately after the purchase, and whose States of residence have sales taxes which are less than the Washington tax); Code of Ga. Ann. § 92–3403(a) (sales of motor vehicles, aircraft and watercraft to nonresidents, if the purchaser intends to use the vehicle outside of Georgia); Ky. Rev. Stat. (1953) § 139.480 (purchases of machinery, when they are for new or expanded productive facilities rather than for the replacement of old facilities).

[23] There is no merit to the suggestion of the *amicus curiae* (Cal.—Ill. Br. 8–9) that the decision below would extend the protections of the Act to servicemen's wives and dependents. The terms of Section 514 are only applicable to the servicemen. Cf. *Christian* v. *Strange*, 96 Ariz. 106, 392 P. 2d 575.

in identifying the many other people, institutions, and sales which are already exempt. It is true in Connecticut,[24] as elsewhere, [25] that various groups entitled to exemptions by reason of their status secure certificates which evidence their rights to decline to pay the tax. It would be a simple matter to have a comparable means of identification for each serviceman, indicating his home State and State of military duty station. For example, we have been advised by the Department of the Navy that all military personnel on active duty in the United States are issued a distinct Department of Defense identification card, which could readily have the necessary information added to it.

In these circumstances, the accounting difficulties would be no greater than those presumably existing at the present time. All retailers in Connecticut and in other States must make provision for accounting for exempt sales and it would be no added burden for the sales clerk, upon presentation of proper identification to treat it in the same manner.

Furthermore, there would be a limited administrative effect to the construction of Section 514 for which

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[24] Section 12–410(1) of the Connecticut statute (App. Br. 13B).

[25] Calif. Rev. and Tax Code, § 6092; Fla. Sales Tax. Rule 318–1.38, C.C.H. Fla. Tax Rep. ¶60–214; Code of Ga. Ann. § 92–3409(a); Ill. Rev. Stat. Ch. 120, § 441; Md. Sales Tax Rule 40(1947), C.C.H. Md. Tax Rep. ¶60–241; Kans. Stat. Ann. tit. 79, § 3602(k); Minn. Stat. Ann. (1962) § 297A.11; Me. Sales Tax Reg. No. 1, C.C.H. Me. Tax Rep. ¶60–206, Mass. Gen. Laws Ch. 64H, § 38; Vernon's Ann. Mo. Stat. § 144.210; N.J. Stat. Ann. 32B: § 54.12; N.Y. Tax Law, § 1132(c); Purdon's Penna. Stat. Ann. tit. 72, § 3403–546; Rev. Civ. Stat. of Texas (1960) tit. 122A, § 20.04; Va. Code § 58–441.17.

we contend here. It has been stipulated that (R. 16A) "[m]ost of the day-to-day purchases of tangible personal property, which includes food, clothing, toilet articles and other personal items, made by servicemen in Connecticut are made from military exchanges, and commissaries operated by the armed services on military installations." Sales at such exchanges and commissaries are already exempt (4 U.S.C. 107(a)) "from * * * the levy or collection of any tax with respect to sale, purchase, storage, or use of tangible personal property"[26] purchased in such a facility. Thus the actual impact would be limited to servicemen's purchases off base, such as the cars exemplified in this record. The transactions should be neither so

[26] Contrary to appellants' suggestion (Br. 16), no inference regarding the congressional purpose underlying Section 514 can be drawn from the Buck Act (4 U.S.C. 105 *et seq.*), which allows imposition, under limited circumstances, of certain State taxes in federal enclaves. The two statutes are the product of different Congresses, the Buck Act having been enacted in 1940, two years before Section 514 was added to the Soldiers' and Sailors' Civil Relief Act and four years before Section 514 was amended to deal expressly with personal property. Moreover, the design of the two provisions is markedly different. Since Congress did not intend by the Buck Act to retrocede to the States general taxing jurisdiction in federal enclaves, it necessarily made express reference to sales and use taxes and to income taxes—the only taxation which it intended to permit. See H. Rep. No. 1267, 76th Cong., 1st Sess., pp. 1–3; S. Rep. No. 1625, 75th Cong., 3d Sess., pp. 2–5. If the Buck Act is at all relevant here, it is for the provision just quoted in the text, which shows that Congres refused to retrocede jurisdiction to impose sales and use taxes on servicemen. It is doubtful that Congress would have intended to deny an exemption from sales and use taxes in Section 514 while granting such exemption to purchases made at military exchanges and commissaries.

many in number nor so large in tax consequences as is predicted.[27]

PART TWO

The foregoing argument has been prepared by officers of the Department of Justice who support it. This is presented (1) in order that the Court may have the benefit of a full professional argument on both sides of the questions involved, and (2) in fairness to the two courts below, to which arguments of this tenor were successfully presented.

The Solicitor General and the Assistant Attorney General in charge of the Tax Division in the Department of Justice—while having no question as to the competence and appropriateness of the arguments presented in the preceding pages—are not persuaded by these arguments. They do not undertake to set

[27] This case does not present the questions raised by appellants (Br. 23) and two *amici* (Cal.-Ill. Br. 8–9) regarding the application of Section 514 to servicemen on furlough. By no means, however, does it follow from the position we urge here that a serviceman would be exempt from sales and use taxation while travelling on furlough in a State that is neither his home nor his duty station. The application of Section 514 is restricted to persons absent from his home State "solely * * * in compliance with military or naval orders". Although an order granting furlough may restrict the serviceman to a certain area, it does not require him to go to any particular jurisdiction in the same sense as do orders sending him to a duty station. It may well be that while on furlough he is not present in a jurisdiction other than his home or duty station "solely" by reason of the order granting him the furlough. At all events, even if the exemption is held to apply to a serviceman on furlough, there would be no significant administrative difficulties that could not be resolved in the manner we have described above.

forth fully the arguments in support of the power of the States to impose sales and use taxes, since those are presented by the appellants and the *amici*, but they do submit the following observations for consideration.

The general orientation of Section 514, which is cast largely in terms of domicile, shows that it was intended to apply to taxes which are, or were thought to be, based largely on domicile. These taxes are the income tax, and annually recurring taxes on personal property. The field of property taxation was one in which the maxim *mobilia sequuntur personam* long held sway, and the patent objective of the statute was that a serviceman should not be found to have acquired a domicile in a State for purposes of that State's taxation when he was living in the State solely because of military orders.

That the focus of the statute was on the income tax and on annually recurring taxes on personal property, and related taxes, is evident from the wording of Section 514. It is also supported by the fact that Congress passed another statute dealing with sales and use taxes. This is the so-called Buck Act, Act of October 9, 1940, c. 787, 54 Stat. 1059, now codified as 4 U.S.C. 105–110. Under this provision, servicemen are exempt from sales and use taxes with respect to sales made to servicemen at commissaries, ships' stores, or post exchanges. If it had been contemplated that servicemen were generally exempt from all State sales and use taxes, the provisions of the Buck Act would not have been necessary as far as such taxes

are concerned. Even as applied to servicemen in their own home State, it would probably have been worded differently.

Moreover, it has been generally understood that Section 514 did not apply to State sales and use taxes. This has been the practical administration in most States for more than a quarter of a century, until the present suit was started. That this was this Court's early understanding of the purpose and effect of the Act is shown in the early decision under Section 514, *Dameron* v. *Brodhead*, 345 U.S. 322, where the Court referred to Section 514 as "freeing servicemen from both income and property taxes * * *" 345 U.S. at 326.[28] Similarly, in the most recent decision of this Court under Section 514, that provision is described as providing "a non-resident serviceman present in a state in compliance with military orders with a broad immunity from that state's personal property and income taxation." *California* v. *Buzard*, 382 U.S. 386, 387.

It is true that Section 514, as amended, contains the word "use" at three places in connection with the taxes to which it applies. (1) It is provided that "this section applies with respect to personal property, or the use thereof, within any tax jurisdiction * * *" (2) The section also contains a definition under which

[28] In the Government's brief in the *Dameron* case, Section 514 is described as providing that "no state other than the state of domicile shall impose a tax upon his personal property or income." Brief for the petitioner (filed by the Solicitor General) in *Dameron* v. *Brodhead*, No. 302, October Term, 1952, p. 8.

"the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof." The context seems to suggest, though, that the word "use" here was intended to make the exemption applicable to annually recurring motor vehicle taxes, which, in some States, are imposed as personal property taxes, and in others are formulated as taxes on the "use" of motor vehicles on the highways, or in the State, for the period for which the tax is imposed. Such a construction would give adequate scope for the word "use" as it appears in Section 514, as amended, while keeping that provision in harmony with the Buck Act, specifically relating to sales and use taxes. Finally, (3) the amendment which was made to Section 514 in 1962,[29] provides that the Section is applicable "with respect to personal property, or the use thereof." The effect of this amendment, was to make the Section applicable to personal property in the State owned by a nondomiciled serviceman, even though he is serving elsewhere under orders. The provision is consistent with the other situations where the word "use" appears in the statute, and does not evidence any intention on the part of Congress to extend the statutory exemption beyond the income tax and the personal property tax, including annually recurring taxes on the use of motor vehicles in the State, or on the highways of the State.

State sales and use taxes rarely involve any question of double taxation, and thus were outside the

[29] Act of October 9, 1962, P.L. 87-771, 76 Stat. 768; applied in *United States* v. *Arlington County*, 326 F. 2d 929 (C.A. 4).

basic purpose which Congress had in mind when it enacted Section 514. With respect to the use tax, there is almost always a credit for sales tax previously paid to another state, so that there is no doubling up of tax liabilities. It is true that there is one situation disclosed in the present record, where a serviceman encountered a double tax—where Commander Foster, domiciled in Texas, purchased an automobile in Connecticut. He was subjected to a Connecticut sales tax, and could have registered the car there. However, when he sought to register the car in Texas, he found that he could not do so without paying sales or use tax to Texas, without credit for the Connecticut sales tax (R. 21A–27A.) The difficulty here, though, would seem to lie in the provisions of the Texas statute with respect to credit for sales tax paid in another State, and that question—if it presents a legal problem—should be attacked directly. It is not a basis for striking down the Connecticut sales and use tax generally, particularly under this statute. Indeed, since the possibility of double tax is exceedingly remote, there is no reason why a non-domiciled service man should not pay a sales tax in Connecticut which is not equally applicable to a serviceman who is domiciled in Connecticut. Yet Congress obviously did not seek to eliminate State sales taxes generally as applied to servicemen, when it enacted Section 514.

The practical problems involved if the judgment below is sustained seem to be in fact far more formidable than is recognized in the argument presented in Part I. It is one thing to provide an exemption from sales tax for a particular type of commodity—

such as food, or medicine—for all purchasers. That involves some problems of definition, but the rules are the same for all purchasers. It is somewhat more difficult to provide exemption for certain types of institutional purchasers—such as schools or churches. But it is obvious that it would be extremely difficult for the States, and for retailers, to administer a system under which some individuals would be exempt from tax on purchases of any type of article, but only on purchases which they make for themselves—not for their wives and children—and only if they are in the State under orders, not being themselves domiciled there, and not on leave. The opportunities for abuse and for benefits to friends, with or without a price, are readily apparent. There does not appear to be anything in Section 514 which is sufficient to establish that Congress intended that the States would have to deal with such a problem.

Under Section 514, the exemption from income tax when a serviceman lives in a State away from his home under military orders is clear, is understandable, and is readily complied with. Similarly, the exemption from the annually recurring tax on personal property, including related taxes on motor vehicles which are imposed on an annual basis, though the tax is in terms for the "use" of the motor vehicle in the State or on the highways of the state for a period, is likewise established and readily complied with. See *California* v. *Buzard, supra.* These make the statute enacted by Congress fully effective. In the view of the Solicitor General and the Assistant Attor-

ney General, it is neither necessary nor appropriate to push the statute beyond so as to make it applicable to the ordinary retail sales tax, and the concomitant use tax, now imposed by most of the States.

Respectfully submitted.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 610

JOHN L. SULLIVAN, Tax Commissioner of the State of Connecticut; GERALD A. LAMB, Treasurer of the State of Connecticut; LOUIS I. GLADSTONE, Comptroller of the State of Connecticut; and ROBERT K. KILLIAN, Attorney General of the State of Connecticut;

Appellants,

v.

UNITED STATES OF AMERICA, ET AL.

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

APPELLANTS' REPLY BRIEF

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CASES CITED

Page

Connecticut Light and Power Co. v. *Walsh*, 134 Conn. 295, 57 A. 2d 128. 2

McLeod v. *J. E. Dilworth Co.*, 322 U.S. 327. 2

United Aircraft Corporation v. *O'Connor*, 141 Conn. 530, 107 A. 2d 398. 2

United States et al v. *Arlington County, et al*, 326 F. 2d 929. 4

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APPELLANTS' REPLY BRIEF

Time limitations compel the Appellants to comment only briefly at this time on a few of the inconsistencies and discrepancies in the Brief for the United States.

1. The basic fallacy in the arguments advanced by the Appellee is that they are all predicated on the proposition that there is no distinction between a sales tax and a compensating use tax. Therefore, the Appellee erroneously concludes each of the taxes complements the other.

We would refute that proposition and the resulting erroneous conclusion.

The sales tax and the use tax are distinct from each other. They are based on different conceptions and are assessments on different transactions, even though in many instances they bring about the same result. *Connecticut Light and Power Co.* v. *Walsh,* 134 Conn. 295, 57 A. 2d 128. Speaking generally, the sales tax is imposed upon transactions within the state and the use tax upon articles bought in other states which, if bought in Connecticut, would be subject to sales tax. *United Aircraft Corporation* v. *O'Connor,* 141 Conn. 530, 107 A. 2d 398.

This Court has recognized that the use tax is intended to complement the sales tax by creating equality of taxation of purchasers on the use of property purchased outside the state, being designed to reach transactions which cannot be reached as sales because of the so-called commerce clause (Art. 1, Sec. 8, Clause 3) of the Constitution of the United States. *McLeod* v. *J. E. Dilworth Co.,* 322 U.S. 327.

It should be obvious from the above that if Connecticut did not have a sales tax it would have no need for a use tax. Plainly stated, the lower court has permitted the tail to wag the dog.

Simply stated, the Appellee is urging this Court to determine that Congress, by including in the 1962 amendatory language the phrase "or the use thereof" after the words "personal property", clearly intended to expand the application of Section 514 of the Soldiers' and Sailors' Civil Relief Act to encompass not only compensating use taxes, but also the whole scheme of sales taxation.

We submit that the Appellee has placed the "use tax" cart before the "sales tax" horse.

Since the Appellee cannot sustain the burden of proving that Section 514 removes the jurisdictional grounds for imposition of the Connecticut sales tax, its arguments are untenable.

2. The Appellee is not consistent in its argument relative to the purpose and intent of the phrase "or the use thereof" appearing in the amendments to Section 514 of the Soldiers' and Sailors' Civil Relief Act.

In the 1944 amendment (58 Stat. 772), the phrase "or the use thereof" was placed after the words "motor vehicles" and Appellee admits that Congress by the use of the phrase "sought to remove a serviceman's exemption from registering his automobile in his host state, unless he had registered (it) in his home State". (Appellee's Br., 15).

Significantly, Appellee does not assert the claim that the phrase was intended to extend to motor vehicles and motor vehicles only immunity from "use" taxes such as Connecticut seeks to impose on servicemen.

In the very next paragraph (Appellee's Br., 16), Appellee deals with the 1962 amendment (76 Stat. 768) in which the phrase "or the use thereof" was placed after the words "personal property" and argues that, although the amendment was intended to deal with ad valorem taxes, the phrase should be interpreted to extend immunity from "use" taxes such as Connecticut seeks to impose on servicemen in this case.

Evidently when it suits their purposes, some government officials are extremely adept switch-hitters.

In our view, the inclusion of the phrase after the words "motor vehicles" in the 1944 amendment was intended to encompass any taxes which astute tax officials might conceive

to annually subject motor vehicles to taxation for the "use" of state highways during the taxing period.

In like manner, the phrase was added after the words "personal property" in the 1962 amendment to encompass any taxes which tax officials might conceive to annually subject to taxation a servicemen's personal property when it was being "used" by his wife and children in a taxing jurisdiction from which the serviceman was absent pursuant to military orders.

3. Appellee argues (Appellee's Br., 25) that the evolution of Section 514 demonstrates that every time the "precise scope" of the statute was open to question, Congress chose to broaden its application. Appellee's staff have convenient memories. At page 7, footnote 3 and page 15 of its brief the two amendments to Section 514 are correctly referred to as "clarifying" amendments. They were so characterized when they were proposed to Congress and clearly embraced only ad valorem taxes. Accordingly, the argument that the "clarifying" amendments broadened the application of Section 514 is fallacious.

Further, it should be noted that the 1962 amendment was proposed to Congress while the so-called *Bottomley* case (*United States et al* v. *Arlington County, et al*, 326 F. 2d 929) was pending and was designed to assure the tax immunity which the court ultimately determined Section 514 (prior to the 1962 amendment) granted to members of the armed forces.

We respectfully suggest that in the instant case the Appellee should more properly be pressing its petition for an enlargement of such tax immunity in the Halls of Congress than in the courts. The courts cannot grant tax exemption by judicial fiat when Congress has not chosen to expressly confer it.

4. Surprisingly, the Appellee takes issue with the conclusion expressed in the Appellants' Brief to the effect that under the lower court's decision a nonresident serviceman would be immune from sales and use taxes in every state except his home state. (Appellee's Br., 37, footnote 27). Our conclusion is based on the decision of the U. S. Court of Appeals for the Fourth Circuit in *United States et al* v. *Arlington County, et al,* supra, stating, "Thus we think the Act makes it clear that the Congress intended to exempt the serviceman from taxation on his personal property except by his 'home' state". We concur with that court's interpretation of Section 514.

It naturally follows that when the lower court in the instant case expanded the scope of Section 514 to encompass sales and use taxes the serviceman acquired immunity from those taxes in every state except his home state.

Accordingly, the absurd factual situations cited in Appellants' Brief (p. 23), if the decision of the lower court is not reversed; are properly delineated.

Further, since the lower court's decision was partially grounded on the language of Section 514(1) "taxation in respect of . . . personal property", the decision extends the immunity to the state's taxes on the purchases of gasoline and cigarettes by nonresident servicemen since those taxes also fall on the consumer and are built into the purchase price.

5. The Appellee seeks to minimize the administrative problems which will result if tax immunity is extended to encompass the above taxes. (Appellee's Br., 35).

Unfortunately, the more one dwells on the effects of the lower court's decision, the higher the mountain of problems becomes. It is like dropping a stone into a pond

and watching the ever-widening ripples reveal new areas affected by the decision. For example, it occurs to us that nothing in Section 514 precludes a serviceman from exercising his right to acquire a new domicile in the state where he is stationed. Therefore the retailer will have the additional burden thrust upon him to determine whether each serviceman entering his store is a bona fide nonresident or whether the serviceman has acquired a new domicile, i.e., "home" state, and is subject to tax.

Respectfully submitted,

THE APPELLANTS

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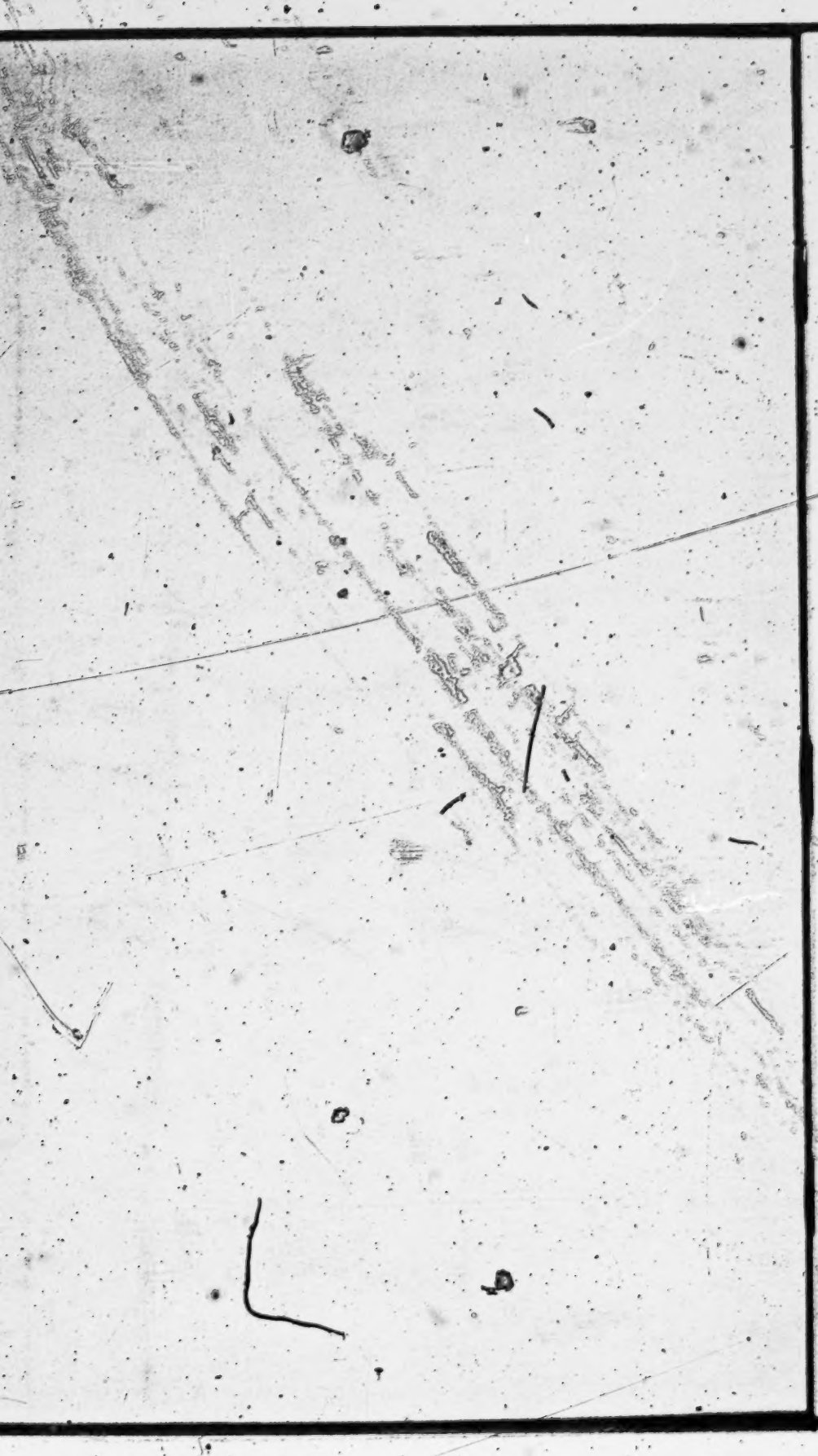

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SUPREME COURT, U. S.

Before the

Supreme Court of the United States

October Term, 1968

No. 610

JOHN L. SULLIVAN, TAX COMMISSIONER OF THE STATE OF CONNECTICUT, ET AL.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

On Appeal From the United States Court of Appeals for the Second Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF OF AMICUS CURIAE STANLEY FISSEL, IN SUPPORT OF APPELLEE

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COCKLE PRINTING CO., 1822 St. Mary's Ave., Omaha

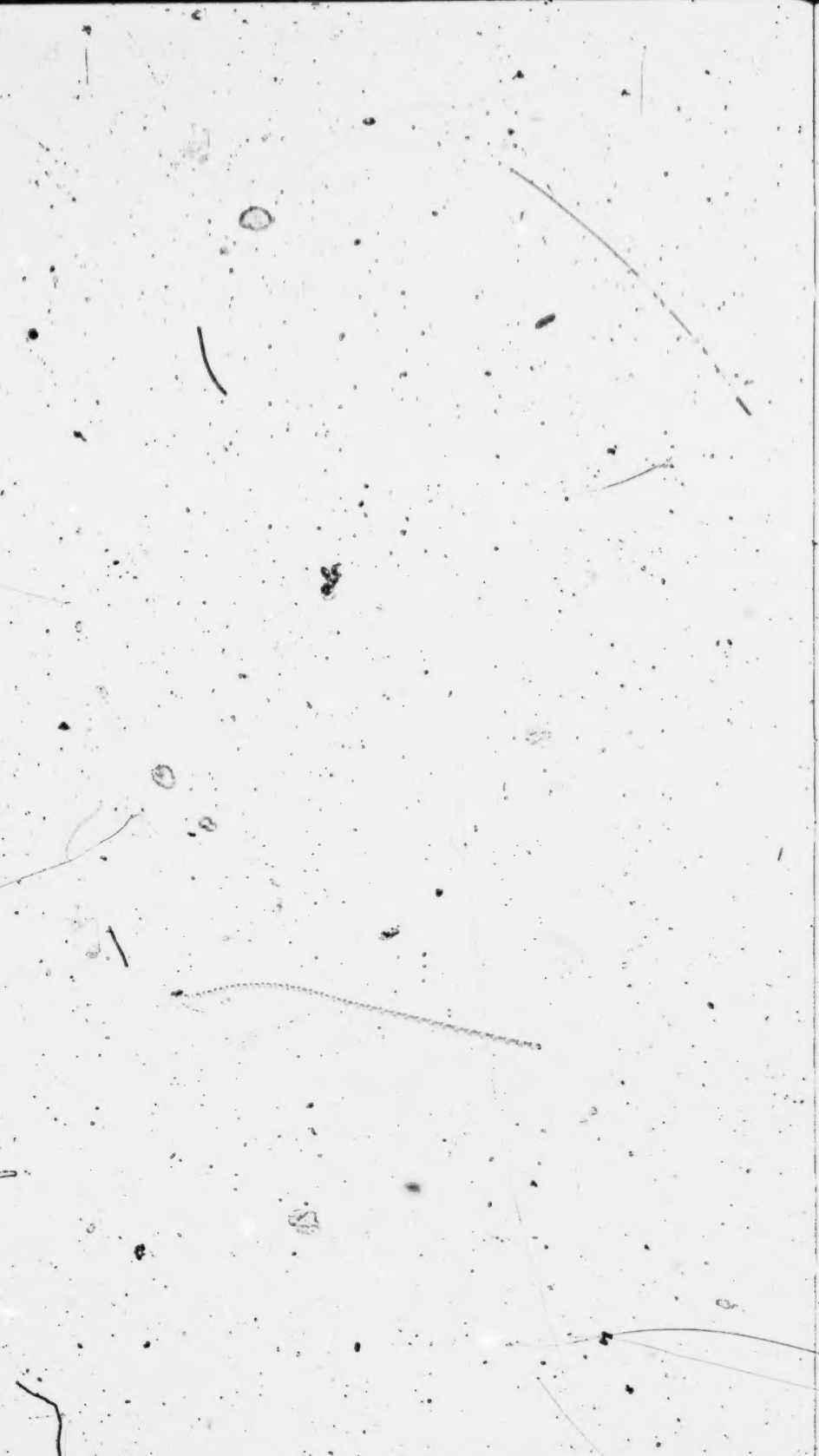
INDEX

	Pages
Motion for Leave to File Brief Amicus Curiae	i
Brief of Amicus Curiae, Stanley Fissel, in Support of Appellee	1
Interest of Amicus Curiae	2
Argument	2
Conclusion	6
Proof of Service	7
Appendix	8

AUTHORITIES CITED

Sec. 514 of the Soldiers and Sailors Civil Relief Act 3, 4, 5

The Nebraska Revenue Act of 1967, § 77-2704, R. S. Supp. 1967 (App. 1) 4, 5, 8



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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Stanley Fissel hereby respectfully moves the Court for leave to file a brief *amicus curiae* in this case in support of the appellee as provided in Rule 42 of the Rules

of this Court. The consent of the Solicitor General has been obtained. The consent of the appellants was requested, but refused.

Stanley Fissel is an Air Force Sergeant on active duty stationed in the State of Nebraska. He is a citizen and domicilliary of the Commonwealth of Pennsylvania. Sergeant Fissel is the plaintiff in an action now pending in the District Court of Lancaster County, Nebraska, wherein Murrell B. McNeil, Tax Commissioner of the State of Nebraska, and Wayne Swanson, Treasurer of the State of Nebraska, are defendants. The action seeks to restrain the collection from plaintiff and all other servicemen similarly situated of the sales and use tax imposed by the Nebraska Revenue Act of 1967 (Secs. 77-2701 to 77-27,135, R. R. Supp. 1967). Sergeant Fissel is also an intervenor in an action now pending in the District Court of Sarpy County, Nebraska, wherein Lt. Col. John P. Smith, U. S. A. F. for himself and for all other servicemen similarly situated is plaintiff, James A. Kenny, Treasurer of Sarpy County, is defendant, and Murrell B. McNeil, Tax Commissioner, is also an intervenor. The Sarpy County action seeks generally the same relief as Sgt. Fissel's Lancaster County action, but limited to the sales and use tax imposed by the above-mentioned sections on motor vehicles and collected by the Sarpy County Treasurer. Offutt Air Force Base is located in Sarpy County and most of the Base complement reside in that county. Both of these state District Court actions are in the pleadings stage, with further action therein postponed pending a decision by this Court herein. As plaintiff for his class, Sgt. Fissel represents 11,961 officers and enlisted men

stationed at Offutt Air Force Base with an annual payroll of $83,521,227,[1] 361 Navy and Marine officers and enlisted men stationed at Fort Omaha, with an annual payroll of $2,753,345.00,[2] and an as yet undetermined number of Army officers and enlisted men on recruiting duty in the State of Nebraska or participating in "Operation Bootstrap" at the University of Nebraska at Omaha.

The appellee will presumably concentrate on the intergovernmental relationships and the legislative questions involved. In the brief tendered herewith, Sgt. Fissel treats the questions involved from the point of view of the serviceman who is, in fact, paying the taxes imposed.

STANLEY FISSEL

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His Attorneys.

---

1. Richard V. Slettin, Deputy Chief Accounting & Finance Officer, Offutt AFB, testimony and exhibits on preliminary hearing, Lancaster County District Court, 9/16/68.

2. Exhibits A, B & C to deposition of Commander William C. Blaney, USN, Bureau of Naval Personnel, taken 11/20/68.

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BRIEF OF AMICUS CURIAE, STANLEY FISSEL, IN SUPPORT OF APPELLEE

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INTEREST OF AMICUS CURIAE

Sergeant Stanley Fissel is in the same situation that Lt. Schuman, U. S. N., was in the District Court herein—a non-resident serviceman paying taxes in a state where he would not be located except for Federal action. While Lt. Schuman purchased a boat in the State of Connecticut, Sgt. Fissel bought automobiles in the State of Nebraska. Upon attempting to license these automobiles in the State of Nebraska, where he was stationed pursuant to military orders, he was advised that he must pay the Nebraska Sales Tax before the license would be granted. A check carrying the notation "Paid under protest" was refused by the Sarpy County Treasurer when tendered in payment of the tax assessed. Thereafter, as explained in the motion for leave to file this brief, he filed actions seeking to restrain the Nebraska officials concerned with collecting the sales tax from collecting the tax from him or persons similarly situated. These actions are now pending the determination of this court in this matter.

—o—

ARGUMENT

At the time of the preliminary hearing in Lancaster County, District Court, Sgt. Fissel, then an Airman First Class, had a basic pay rate of $138.75 per month, plus $60.00 Class Q allotment and a rations allowance of $39.60 per month. He supplemented his income by approximately $100.00 per month by working part time as a mechanic. Since that time he has received an increase in basic pay of $50.00 per month due to longevity and an

additional $50.00 per month by reason of his promotion. At the time of the hearing, Sgt. Fissel's wife was working as a secretary earning $420.00 per month. His housing costs $68.00 per month for payments on his house trailer which he purchased in the State of Nebraska, plus $38.00 per month for lot rental and approximately $18.00 per month for utilities. He has traded cars twice since the Nebraska Sales and Use Tax was imposed, paying $26.00 in sales taxes on one purchase and $49.00 on the other.[1] The Nebraska Sales and Use Tax was imposed at the rate of 2½% for the period June 1, 1967, through January 1, 1969, when it was cut to 2%. The Nebraska Sales and Use Tax was generating revenue for the State of Nebraska at the rate of $65,000,000.00 per year, as opposed to estimates and budgeted appropriations of $55,000,000.00 per year, or an amount $20,000,000.00 in excess of the biennial budget.[2] Servicemen at Offutt would contribute about $683,000.00 annually to this total collected.[3] The State of Nebraska will thus suffer no financial hardship if it is restrained from collecting this tax from servicemen within its jurisdiction.

Appellant urges that a reading of Sec. 514 of the Soldiers and Sailors Civil Relief Act to apply to sales and use taxes would give a result that is absurd, inequitable and unfair, and fiscally disruptive. This *amicus* feels that such a reading results in a conclusion which is

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1. Testimony, Stanley Fissel, Lancaster County District Court, Sept. 16, 1968.

2. Deposition of Murrell B. McNeil, taken 9/12/68.

3. Richard V. Slettin testimony, Lancaster County District Court, 9/16/68. This is exclusive of "on base" purchases.

logical, equitable, fair and no more disruptive of fiscal affairs and the nerves of retailers generally than other state administrative reporting requirements. The object of Sec. 514's beneficence, the average serviceman, is notoriously underpaid and notoriously subject to the exigencies of the Federal service in determining where he would reside. He is peculiarly needful of such economic advantages as Congress may be able to give him. The sales and use tax is particularly well known as a regressive tax. Seventy-five Dollars ($75.00) in automobile sales taxes to an Air Force accounting clerk earning $238.35 monthly in the Air Force is clearly far more important to him than the same amount which might be paid by a civilian plumber or carpenter or any other blue collar worker earning in excess of $10,000.00 annually.

The Nebraska Revenue Act of 1967 in § 77-2704, R. S. Supp. 1967 (App. 1) contains 13 separate general headings for exemptions from the tax. The monthly reporting form prescribed by the State Tax Commissioner for retailers contains seven lines for listing exempt sales or deductions: "Sales to Dealers", "Bad Debts", "Deliveries outside state", "Sales in excess of $100 to exempt organizations", "Feed, seed, agricultural chemicals, medicine and prosthetic devices", "Sales of motor vehicles",[1] and "Other allowable deductions". Military personnel carry cards readily identifying them as such. The addition of another line to the form, or the use of the last

1. The motor vehicle sales tax in Nebraska is collected by the County Treasurer, not the dealer.

general line now thereon, is a simple and direct way to solve any possible administrative reporting problem.

A plain reading of Sec. 514 shows Congress to have been zealous in protecting the serviceman who may find himself "in interstate commerce" due to the needs of the service. Sec. 514 (1) provides that a serviceman shall not be deemed to have lost a residence or domicile in a state by reason of absence therefrom due to military orders. Sgt. Fissel must, therefore, be considered still a Pennsylvania resident despite physical presence in Nebraska, and sales to him must likewise be considered to have been made to him as if he were in Pennsylvania. The Nebraska Act (§ 77-2704 (1) (h)) exempts sales of property shipped outside the state. The practical effect of Sec. 514 is that Sgt. Fissel carries a part of Pennsylvania with him for interstate tax purposes wherever he may go, just as in international law our battleships or embassies carry a part of The United States with them. This conclusion is implicit in the wording of Sec. 514— "For the purposes of taxation in respect of *any person* . . ." The appellant attempts to rely on cases distinguishing income taxes, property taxes and privilege taxes, with the concomitant theoretical difference in "impact" of the tax. No matter what you call it or how you distinguish it, the impact of the tax is on the serviceman, and Congress has declared that that "person" shall not be considered to be outside his home state for purposes of the imposition of taxes by another state.

CONCLUSION

A reflective consideration of the problems sought to be cast by the appellant shows that such problems are merely shadows without substance. The text of Sec. 514 of the Soldiers and Sailors Civil Relief Act clearly shows that it was the person of the serviceman, shuttled about from state to state pursuant to military necessities, and that serviceman's pocketbook that Congress was concerned about and gave protection to in the act. The Congress clearly was not concerned with the name for the tax that ingenuity could provide, or sterile, theoretical distinctions as to "impact" or "incidence" of the tax. The decision of the Court of Appeals for the Second Circuit is clearly correct and should be affirmed.

STANLEY FISSEL

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His Attorneys.

PROOF OF SERVICE

I, Benjamin M. Wall, one of the attorneys for Stanley Fissel as *amicus curiae* herein, and a member of the Bar of the Supreme Court of The United States, hereby certify that on the ..... day of March, 1969, I served copies of the foregoing "Motion for Leave to File Brief Amicus Curiae and Brief Amicus Curiae of Stanley Fissel" on the several parties thereto and on the several *amici curiae* urging reversal herein, by mailing a copy hereof in a properly addressed envelope, first class postage prepaid, directed to the respective counsel of record for each said party and *amicus curiae*.

_____

Benjamin M. Wall

APPENDIX

77-2704. Sales and use tax; exemptions from act. (1) There are exempted from the computation of the amount of sales and use taxes imposed by sections 77-2701 to 77-27,135 the gross receipts from the sale, lease or rental of and the storage, use, or other consumption in this state of the following:

(a) Tangible personal property the gross receipts from the sale, lease, or rental of which, or the storage, use, or other consumption of which this state is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this state;

(b) (i) Aircraft fuel as defined under the provisions of Chapter 3, article 1;

(ii) Minerals, oil, and gas as defined under the provisions of Chapter 57; and

(iii) Motor vehicle fuels as defined, taxed or exempted under the provisions of Chapter 66, article 4, and special fuels as defined, taxed or exempted for use on the highways under the provisions of Chapter 66, article 6;

(c) Tangible personal property used for the performance of a written contract entered into prior to June 1, 1967, except as provided in subdivision (1) (g) of section 77-2703;

(d) Any newspaper regularly issued at average intervals not exceeding one week; *Provided,* that such newspaper contains matters of general interest and reports of current events;

(e) Leased tangible personal property sold to a lessee of that tangible personal property under an agreement whereby certain rental payments are credited against the purchase price of that tangible personal property; *Provided,* that this exemption shall not exceed the amount for which the lessor has collected and paid tax on such rental payments;

(f) Prescription medicines when prescribed and dispensed for human use by a person licensed under the provisions of Chapter 71, article 1, and prosthetic devices;

(g) (i) Meals and food products, including soft drinks and candy, for human consumption served by public or private schools, school districts, student organizations, or parent-teacher associations pursuant to an agreement with the proper school authorities, in an elementary or secondary school or at any institution of higher education, public or private, during the regular school day or at an approved function of any such school or institution, but such exemption shall not apply to sales at any facility or function which is open to the general public, except that concession sales by elementary and secondary schools, public or private, shall be exempt;

(ii) Meals and food products, including soft drinks and candy, for human consumption when sold by a church at a function of such church; and

(iii) Meals and food products, including soft drinks and candy, for human consumption when served to patients and inmates of hospitals and other institutions licensed by the state for the care of human beings;

(h) Tangible personal property which is shipped to a point outside this state pursuant to the contract of sale by delivery by the retailer to such point by means of facilities operated by the retailer, delivery by the retailer to a carrier for shipment to a consignee at such point, delivery by the retailer to the United States post office for delivery outside this state, or delivery by the retailer to a customs broker or forwarding agent for shipment outside this state. This shall include the gross receipts from sales of tangible personal property to a common carrier, shipped by the seller via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier;

(i) The gross receipts from the sale, lease, or rental of any tangible personal property to, or the storage, use, or other consumption of tangible personal property by any organization created exclusively for religious purposes, any nonprofit organization providing services exclusively to the blind, any school, public or private, any educational institution established under the provisions of Chapter 14, 79, or 85, any private college or university, any licensed hospital, or any orphanage, or any licensed child placement agency. The institutions named in this subdivision shall pay the sales or use tax for any transaction when the consideration therefor is one hundred dollars or less but shall be entitled to a refund of any amount so paid upon the filing of a claim for refund in the manner provided in subdivision (1) (i) of section 77-2702. Any

person purchasing, storing, using, or otherwise consuming tangible personal property in the performance of any construction, improvement, or repair by or for any such institution organized not for profit, which tangible personal property is incorporated into a structure and becomes the property of the owner of the institution, shall pay any applicable sales or use tax thereon but shall be entitled to a refund of the amount of taxes so paid. Such refund shall be made in the manner provided pursuant to subdivision (1) (i) of section 77-2703;

(j) The gross receipts from the sale of tangible personal property when sold through coin operated vending machines below a sum of fifteen cents;

(k) Sales and purchases of electricity, coal, gas, fuel oil, diesel fuel, tractor fuel, propane, gasoline and oil, and coke for use in processing, manufacturing, mining, refining, irrigation, farming, building construction, telegraph, telephone and radio communication, street, and railroad transportation services and all business, commercial and industrial uses;

(l) The use of coin-operated machines used for laundering and cleaning; and

(m) Purchases by the state or by any county, township, city, or village, for use in a governmental capacity, when the consideration in any single transaction is in excess of one hundred dollars.

(2) The storage, use, or other consumption in this state of tangible personal property, the gross receipts from the sale, lease, or rental of which are required to be

included in the measure of the sales tax and on which the sales tax has been paid, is exempted from the use tax.

(3) The use tax imposed in sections 77-2701 to 77-27,135 shall not apply to:

(a) The use, in this state, of materials and replacement parts which are acquired outside this state and which are moved into this state for use directly in the repair and maintenance or manufacture of motor vehicles, watercraft, railroad rolling stock, or aircraft engaged as common carriers of persons or property; and

(b) The storage, use, or consumption of tangible personal property which is acquired outside this state, the sale, lease, or rental or the storage, use, or consumption of which property would be exempt from the sales or use tax were it purchased within this state.

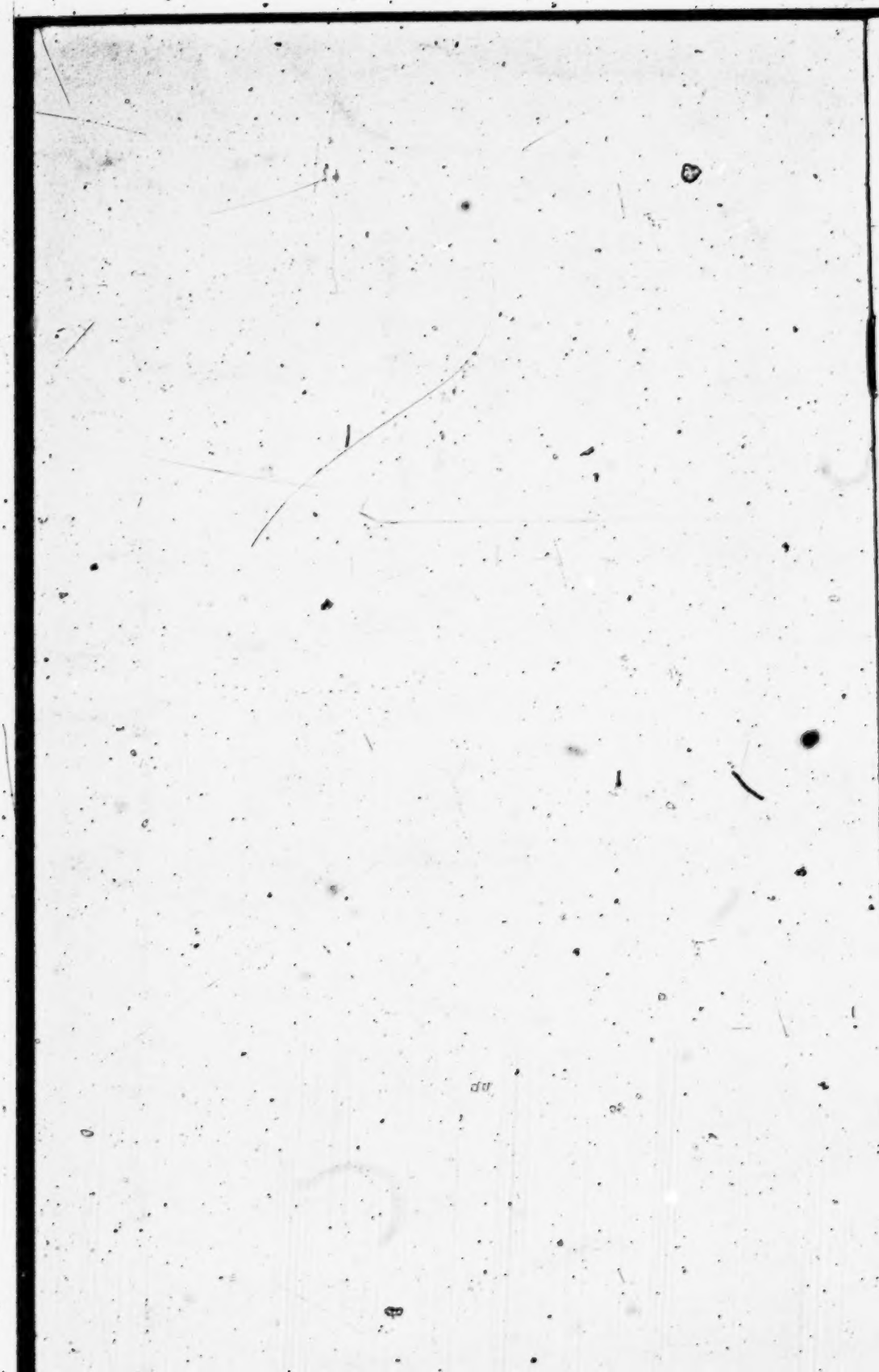
(4) If any person, who causes tangible personal property to be brought into this state, has already paid a tax in another state in respect to the sale or use of such property in an amount less than the tax imposed by this section, the provision of this section shall apply, but at a rate measured by the difference only between the rate herein fixed and the rate by which the previous tax on the sale or use was computed. If such tax imposed and paid in such other state is equal to or more than the tax imposed herein, then no use tax shall be due in this state on such personal property; *Provided,* that such other state, territory or possession grants a reciprocal exclusion or exemption to similar transactions in this state.

(5) A lease of tangible property from a subsidiary

to the parent company shall not be subject to the sales and use tax imposed by sections 77-2701 to 77-27,135. Such subsidiary company shall have the same sales and use tax liability on the purchase of property to be leased to the parent company as the parent company would have paid if the parent company had purchased the property directly.

Source: Laws 1967, c. 487, § 4; Laws 1967, c. 490, § 3.
Effective date April 28, 1967.

APPELLANTS' BRIEF



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IN THE

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OCTOBER TERM, 1968

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Appellants,

v.

UNITED STATES OF AMERICA, ET AL.

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

APPELLANTS' OBJECTIONS TO MOTION OF STANLEY FISSEL FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF APPELLEE

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ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
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APPELLANTS' OBJECTIONS TO MOTION OF STANLEY FISSEL FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF APPELLEE

Appellants object to the Motion for the following reasons:

1. The United States District Court for the District of Connecticut dismissed the claim of Lt. Stanley D. Schuman, U.S.N., who had sued for himself and on behalf of all servicemen or former servicemen similarly situated, for lack of jurisdiction. No appeal was taken from said dismissal. The instant Motion is obviously an attempt to participate in the

case indirectly when the lower court has foreclosed such participation directly.

2. The parties to this action entered into a stipulation of facts (R.A., 13A) and affidavits were submitted by agreement as to the sales transactions in dispute. This Motion raises new facts which Appellants have not had an opportunity to contest or rebut. For example, Appellants would want to inquire as to whether Stanley Fissel received his training as a mechanic at government expense, which would have an effect on the total value of the salary and benefits received from the government. Appellants would also want to inquire as to whether the motor vehicles purchased by Stanley Fissel were used in his trade as a mechanic so as to bring such transactions within the statutory exclusion of Section 514(1), 54 Stat. 1178. (A.B., 2)

3. The Motion raises additional questions and issues which are not susceptible of resolution at the appellate stage of the proceedings. Rather than aiding the Court in its deliberation of the issues, we submit it would be misleading and confusing.

4. The Motion does not raise or introduce new or novel arguments which the United States of America has not directly or indirectly addressed to the lower courts and which it will undoubtedly address to this Court.

5. The Motion is purported to be filed in conformance with Rule 42 of the Rules of the Supreme Court of the United States but aside from the reference to the rule there has not been compliance with the requirements of such rule.

6. The Motion does not comply with Rule 42 (3) of the Rules of the Supreme Court of the United States in that it incorrectly includes the brief of the prospective amicus curiae before the appellants have had an opportunity to file objections to the granting of the Motion.

7. Rule 42 (2) of the Rules of the Supreme Court of the United States has not been complied with in that the brief has been effectively filed without an order of this Court granting permission for such filing.

As a practical matter, it is recognized that by bringing the contents of his brief to the attention of this Court by the irregular means followed by him, counsel has accomplished his immediate objective. However, we submit that the Court should not condone such flagrant non-compliance with procedural requirements.

Accordingly, it is respectfully submitted that for the above reasons and in the interest of orderly procedure the Motion should be denied.

Respectfully submitted,

THE APPELLANTS

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Assistant Attorney General

RALPH G. MURPHY
Assistant Attorney General

RICHARD A. GITLIN
Assistant Attorney General

Their Attorneys

SUPREME COURT OF THE UNITED STATES

No. 610.—October Term, 1968.

John L. Sullivan, Tax Commissioner of the State of Connecticut, et al., Appellants, v. United States et al.	On Appeal From the United States Court of Appeals for the Second Circuit.

[May 26, 1969.]

Mr. Justice Stewart delivered the opinion of the Court.

The issue raised by this appeal is whether § 514 of the Soldiers' and Sailors' Civil Relief Act [1] prohibits Connecticut from imposing its sales and use taxes on servicemen stationed there who are residents or domiciliaries of other States. The United States instituted this action in federal court against the appropriate Connecticut officials on behalf of the aggrieved servicemen.[2]

[1] As added by § 17 of the Soldiers' and Sailors' Civil Relief Amendments of 1942, 56 Stat. 777, and as amended, 58 Stat. 722, 76 Stat. 768, 50 U. S. C. App. § 574.

[2] Although the issue was raised in the District Court, the appellants no longer dispute the right of the United States to bring this action on behalf of the servicemen in federal court. See *Department of Employment* v. *United States*, 385 U. S. 355, 358; *United States* v. *Arlington County*, 326 F. 2d 929.

In this Court the United States has presented arguments prepared by officers of the Department of Justice in support of the judgment below. The Solicitor General and the Assistant Attorney General in charge of the Tax Division of the Department of Justice have informed the Court, however, that they have not been persuaded by those arguments, and that they do not believe that § 514 was intended to apply to the ordinary retail sales tax and concomitant use tax now imposed by most of the States. For other examples of such divergence of opinion among representatives of the United States before this Court, see *De Laval Steam Turbine Co.* v. *United States*, 284 U. S. 61, 67–68; *Kornhauser* v. *United States*, 276 U. S. 145, 147–151.

The District Court entered a declaratory judgment that the federal statute prevents collection of the sales and use taxes from such servicemen,[3] and the Court of Appeals affirmed.[4] We noted probable jurisdiction of the appeal.[5]

The sales and use taxes imposed by the Connecticut Education, Welfare, and Public Health Tax Act[6] are typical of those enacted by the vast majority of States.[7] A tax of 3½% is levied on the gross receipts from sales of tangible personal property at retail within the State.[8] Although the retailer is liable for payment of the tax, he is required to pass it on to purchasers by adding it to the original sales price of all items sold.[9] The use tax is imposed at the same rate on "the storage, use or other consumption" in the State of tangible personal property purchased from any retailer.[10] The use tax provisions—designed to reach the use or consumption in the State of property purchased outside it[11]—exempt all

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[3] 270 F. Supp. 236. The District Court later amended its judgment to permit Connecticut to continue to collect sales and use taxes from nonresident servicemen, provided that the amounts collected would be refunded if the judgment was ultimately sustained.

[4] 398 F. 2d 672.

[5] — U. S. —.

[6] Connecticut Gen. Stat. §§ 12–406 to 12–432a.

[7] See J. Hellerstein, State and Local Taxation Cases and Materials 15 (3d ed. 1969). 35 States have filed briefs in this case in support of the position of Connecticut.

[8] § 12–408 (1). This section also imposes the sales tax on "the privilege of . . . transferring occupancy of any room or rooms in a hotel or lodging house."

[9] § 12–408 (2).

[10] § 12–411 (1).

[11] See, *e. g.*, *Stetson* v. *Sullivan*, 152 Conn. 649, 652–653, 211 A. 2d 685, 686; *Avco Mfg. Corp* v. *Connelly*, 145 Conn. 161, 170–171, 140 A. 2d 479, 484; *Connecticut Light & Power Co.* v. *Walsh*, 134 Conn. 295, 299–300, 57 A. 2d 128, 130–131.

transactions which are subject to the sales tax.[12] And while the consumer is liable directly to the State for the use tax, he can discharge his liability by paying it to the retailer if the retailer is "engaged in business" within the State and therefore required to collect the use tax.[13] The use tax is also imposed upon purchasers of motor vehicles, boats, or airplanes from nonretailers.[14] The amount of any tax under the Act is reduced by whatever sales or use tax has already been collected "by any other state or political subdivision thereof." [15] Finally, the Act commands that all proceeds of the sales and use taxes "shall be allocated to and expended for public health, welfare and education purposes only." [16]

By stipulation and affidavits in the District Court, the parties offered some examples of the imposition of these taxes on naval personnel stationed in Connecticut but domiciled elsewhere. Lieutenant Schuman, a Nebraska domiciliary, and Commander Carroll, a Michigan domiciliary, bought used motorboats from nonretailers in Connecticut and were assessed a use tax. Schuman paid the tax under protest, and Carroll has refused to pay, each claiming that he is exempt under the Soldiers' and Sailors' Civil Relief Act.[17] Lieutenant Commander

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[12] § 12–413 (1).

[13] §§ 12–411 (2), (3).

[14] § 12–431.

[15] § 12–430 (5).

[16] § 12–432.

[17] Lieutenant Schuman joined the United States as a party plaintiff in the District Court, seeking to represent the class of all servicemen or former servicemen from whom Connecticut had collected or threatened to collect any sales or use tax. The complaint was dismissed as to him for lack of jurisdiction, on the grounds that the requisite jurisdictional amount was not alleged to be in controversy and that the Eleventh Amendment forbids a suit by a private individual against a State in the federal courts. 270 F. Supp. 236, 246–247.

Schaffer and Commander Foster, who are domiciled in Pennsylvania and Texas respectively, each purchased a new car; the Connecticut retailer collected and paid the sales tax. Foster registered his car in Texas, which also exacted a sales or use tax.[18] Finally, Commander Roloff, whose home State is Wisconsin, purchased a used car in Florida and paid that State a 2% sales tax. When he registered the car in Connecticut, he was assessed and paid the use tax, with credit for the Florida sales tax.

As enacted in 1942,[19] § 514 of the Soldiers' and Sailors' Civil Relief Act provided that for purposes of any state "taxation in respect of any person, or of his [personal][20] property, income, or gross income," he shall not be deemed to have lost his residence or domicile in his home State or acquired a residence in any other State "solely by reason of being absent [from home] in compliance with military or naval orders." Clarifying language was added in 1944 to provide that for purposes of taxation in respect of personal property, the "personal property shall not be deemed to be located or present in or to have a situs for taxation in such State." Also in 1944 Congress enacted a special subsection for automobiles:

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[18] Foster's situation is not entirely clear. His affidavit states that officials of the Connecticut Department of Motor Vehicles informed him that he was required to pay a use tax but the tax actually paid was identified on the dealer's invoice as a sales tax. The latter seems to be correct, since the purchase was from a Connecticut retailer. Texas officials told Foster he would have to pay a sales tax in order to register the car in that State. The Texas tax collector's receipt does not identify whether the payment was a sales or use tax, however, and under the Texas statutes it appears more likely that it was the latter. Tex. Rev. Civ. Stat. Ann., Art. 6.01, provides that the motor vehicle sales tax applies only to sales in the State, while the use tax, in the same amount, applies to out-of-state sales of motor vehicles for use in Texas.

[19] 56 Stat. 777.

[20] The word "personal" was interpolated by the 1944 amendment. 58 Stat. 722.

servicemen are exempt from "licenses, fees, or excises imposed in respect of motor vehicles or the use thereof" if they have paid such levies in their home States. Finally, in 1962,[21] Congress added the provision that § 514 applies to property in any tax jurisdiction other than the serviceman's home State, "regardless of where the owner may be serving" in compliance with military orders.[22]

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[21] 76 Stat. 768.

[22] Section 514, as recorded in 50 U. S. C. App. § 574, now reads in its entirety as follows:

"(1) For the purposes of taxation in respect of any person, or his personal property, income or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district. Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders: *Provided*, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property

We think it clear from the face of § 514 that state taxation of *sales* to servicemen is not proscribed. A tax on the privilege of selling or buying property has long been recognized as distinct from a tax on the property itself.[23] And while § 514 refers to taxes "in respect of" rather than "on" personal property, we think it an overly strained construction to say that taxation of the sales transaction is the same as taxation "in respect of" the personal property transferred. Nor does it matter to the imposition of the sales tax that the property "shall not be deemed to be located or present in or to have a situs for taxation" in Connecticut. The incidence of the sales tax is not the property itself or its presence within the State. Rather it is the transfer of title for consideration,[24] a legal act which can be accomplished without the property ever entering the State.[25] Had Congress intended to include sales taxes within the coverage of

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used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

"(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof; *Provided*, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

[23] See, *e. g.*, N. Jacoby, Retail Sales Taxation 3–4 (1938). And see n. 28, *infra*.

[24] The Connecticut statute defines a "sale" generally as "any transfer of title . . . for a consideration." § 12–407 (2) (a). And see *Avco Mfg. Corp.* v. *Connelly*, 145 Conn. 161, 172, 140 A. 2d 479, 484–485. The term also includes a transaction in which the right of possession is transferred but the seller retains title as security. § 12–407 (2) (f).

[25] See Conn. Gen. Stat. § 42a–2–401 (3).

§ 514, it surely would not have employed language so poorly suited to that purpose as "taxation in respect of the personal property."

It is contended on behalf of the servicemen that, even if § 514 does not encompass sales taxes, at least it prohibits taxation of the *use* of personal property. Not only are use taxes said to fall literally within the meaning of the phrase "taxation in respect of the personal property," but § 514 specifically refers in several places to property "or the use thereof." Moreover, it is argued, the sole jurisdictional basis of the use tax is the location of the personal property in Connecticut; yet imposition of a tax with such incidence on a serviceman contravenes the command of § 514 that his personal property "shall not be deemed to be located or present in or to have a situs for taxation in such State." While we agree that use taxes are not so clearly excluded by the language of § 514 as are sales taxes, neither do we believe that they are clearly included. And consideration of the purpose and legislative history of § 514 along with its language and other factors has led us to the conclusion that Congress did not intend to free servicemen stationed away from home from the sales *or* use taxes of the host State.

The legislative history of the 1942 enactment and the 1944 and 1962 amendments of § 514 reveals that Congress intended the Act to cover only annually recurring taxes *on* property—the familiar ad valorem personal property tax. Thus, the reports advert to the possibility that servicemen ordered to move around the country—as they were increasingly during World War II—might have their property taxed by more than one State "within the same calendar year." [26] And the reports throughout refer explicitly to "personal-property taxes on prop-

[26] S. Rep. No. 1558, 77th Cong., 2d Sess., 11 (1942); H. R. Rep. No. 2198, 77th Cong., 2d Sess., 6 (1942).

erty." [27] The language of these reports is simply irreconcilable with the proposition that Congress thought the Act would apply to a tax which, like the sales or use tax, does not apply annually to all personal property within the State but is imposed only once and then only when there has been a retail sales transaction.[28]

The absence of any reference to sales and use taxes in the history of § 514 is particularly illuminative of legislative intent when considered in the light of Congress' full awareness of such state taxes and their relationship to

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[27] S. Rep. No. 959, 78th Cong., 2d Sess., 1 (1944). See also the reference to "personal property taxes" in H. R. Rep. No. 1514, 78th Cong., 2d Sess., 2 (1944). The reports on the 1942 Act talked about "taxation of the property" and the possibility that "the personal property . . . may become liable for taxes in several States." S. Rep. No. 1558, *supra*, n. 26, at 11; H. R. Rep. No. 2198, *supra*, n. 26, at 6. At the time of the 1962 Amendment, the reports continued to describe the taxes covered by § 514 as those "imposed upon property of a serviceman." S. Rep. No. 2182, 87th Cong., 2d Sess., 1 (1962); H. R. Rep. No. 2126, 87th Cong., 2d Sess., 1 (1962).

[28] It has frequently been said that a use tax, like a sales tax, is an excise or privilege tax different in kind from a tax *on* property. *E. g., Monamotor Oil Co.* v. *Johnson*, 292 U. S. 86, 93; *Bowman* v. *Continental Oil Co.*, 256 U. S. 642, 649. As the Connecticut Supreme Court has described the very tax here in question, "The use tax is not a tax on property but is described in the act as, and in fact is, in the nature of an excise tax upon the privilege of using, storing or consuming property." *Connecticut Light & Power Co.* v. *Walsh*, 134 Conn. 295, 307, 57 A. 2d 128, 134. This distinction may sometimes be more formal than actual, cf. *Henneford* v. *Silas Mason Co.*, 300 U. S. 577, 582, 586. But its long-time general acceptance supports the conclusion that when Congress talked about taxes on, or even "in respect of," personal property, it did not thereby include use taxes.

This conclusion is further buttressed by the close interconnection of sales and use taxes. See generally 3 State Taxation of Interstate Commerce, H. R. Rep. No. 565, 89th Cong., 1st Sess., 607–620 (1965). As a complement to the sales tax and an integral part of a single broad pattern of excise taxes, the use tax is not likely to have been grouped by Congress with taxes "in respect of personal property."

federal interests. Sales and use taxes were prevalent by 1942,[29] and Congress had dealt specifically with them only two years earlier. In the 1940 Buck Act,[30] Congress provided that the States have "full jurisdiction and power to levy and collect" sales and use taxes in "any Federal area," [31] except with respect to the sale or use of property sold by the United States or its instrumentalities through commissaries, ship's stores, and the like.[32] If nothing else, this statute illustrates that Congress in 1942 was fully cognizant of state sales and use taxes and identified them by name when it wanted to deal with them. Moreover, it is unlikely that Congress, which had in 1940

[29] By 1938, more than half the States had adopted sales and use taxes. See 3 State Taxation of Interstate Commerce, *supra*, n. 28, at 609.

[30] 54 Stat. 1059, 4 U. S. C. §§ 105–110.

[31] 4 U. S. C. § 105 (a) states:

"No person shall be relieved from liability for payment of, collection of, or accounting for any sales or use tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, on the ground that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a Federal area; and such State or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area."

[32] 4 U. S. C. § 107 states:

"(a) The provisions of sections 105 and 106 of this title shall not be deemed to authorize the levy or collection of any tax on or from the United States or any instrumentality thereof, or the levy or collection of any tax with respect to sale, purchase, storage, or use of tangible personal property sold by the United States or any instrumentality thereof to any authorized purchaser.

"(b) A person shall be deemed to be an authorized purchaser under this section only with respect to commissaries, ship's stores, or voluntary unincorporated organizations of personnel of any branch of the Armed Forces of the United States, under regulations promulgated by the departmental Secretary having jurisdiction over such branch."

expressly authorized sales and use taxation of servicemen everywhere on federal military reservations except post exchanges, would two years later have exempted so many of them from such taxes by means of such imprecise language as that of § 514 of the Soldiers' and Sailors' Civil Relief Act. And since servicemen can apparently purchase all the necessities and many of the luxuries of life tax-free at military commissaries,[33] Congress may reasonably have considered the occasional sales and use taxes that servicemen might have to pay an insignificant burden, as compared with annual ad valorem property taxes, and consequently not deserving of the same exemption.[34]

Section 514 does not relieve servicemen stationed away from home from all taxes of the host State. It was enacted with the much narrower design "to prevent mul-

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[33] The stipulation filed in the District Court contained the following:

"11. Most of the day-to-day purchases of tangible personal property, which includes food, clothing, toilet articles and other personal items, made by servicemen in Connecticut are made from military exchanges, and commissaries operated by the armed forces on military installations.

"12. Sales made by military exchanges and commissaries operated by the armed services on military installations to servicemen are not subject to any tax under the Tax Act."

[34] Conversely, the administrative burden which the States would have to shoulder if § 514 applied to sales and use taxes is potentially far greater than that attributable to the exemption from ad valorem property taxes. Whereas property taxation involves only the property owner and the tax officials, sales and use taxation usually requires participation and accounting by the seller as well. And the accounting difficulties which retailers and the States would encounter in determining for thousands of transactions which customers were properly exempt under § 514 are considerably greater than any that Congress can be thought to have envisioned for the exemption from property taxes alone.

tiple State taxation of the property." [35] And the substantial risk of double taxation under multi-state ad valorem property taxes does not exist with respect to sales and use taxes. Like Connecticut, nearly every State which levies such taxes provides a credit for sales or use taxes paid on the transaction to another State.[36] Of course it is true, as we held in *Dameron* v. *Brodhead*, 345 U. S. 322, that § 514 prevents imposition of ad valorem property taxes even though the serviceman's home State does not tax the property. But the predominant legislative purpose nonetheless remains highly relevant in determining the scope of the exemption, and the absence of any significant risk of double taxation under state sales and use taxes generally is therefore strong evidence of congressional intent not to include them in §514.

The language of § 514 does not undercut our conclusion that Congress did not propose to exempt servicemen from sales and use taxes. The appellees, like the courts below, make much of the reference at two places in the section to property "or the use thereof." This phrase first appeared in the 1944 addition of subsection (2)(b):

> "When used in this subsection, . . . (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles

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[35] S. Rep. No. 1558, *supra*, n. 26, at 11; H. R. Rep. No. 2198, *supra*, n. 26, at 6. This purpose was restated in the 1944 reports: "When the Soldiers' and Sailors' Civil Relief Act of 1940 was amended by the act of October 6, 1942, a provision was written into the act to relieve persons in the service from liability of double taxation by being moved from one State to another under orders." H. R. Rep. No. 1514, *supra*, n. 27, at 2.) And see S. Rep. No. 959, *supra*, n. 27, at 1.

[36] See Prentice-Hall State and Local Tax Service, All States Tax Unit, ¶ 92,963.

> or the use thereof: *Provided,* That the license, fee, or excise required by the State . . . of which the person is a resident or in which he is domiciled has been paid."

The second reference to "use" did not appear until the addition to subsection (1) of the following sentence in 1962:

> "Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders . . . ."

We think that, in light of the clear indications of congressional intent discussed above, the most sensible inference to be drawn from this language is that the only taxes on the *use* of property from which servicemen are exempted are the special registration taxes imposed annually by all States on the use of motor vehicles. Indeed, this interpretation is supported by the structure of § 514 itself. There is no reference to "use" of property in those portions of subsection (1) which set out the basic exemption and in which Congress would naturally have been expected to mention use taxes had it meant to include them. Moreover, subsection (2)(b) does *not* say that for purposes of § 514 "taxation" includes "licenses, fees, or excises" on the use of *all* personal property except those in respect of motor vehicles for which such fees have not been paid at home. Rather it says that "taxation" includes such levies *only on motor vehicles* when they have been paid at home. Thus, as we held in *California* v. *Buzard,* 382 U. S. 386, subsection (2)(b) does not encompass ordinary revenue-raising

excise or use taxes, but is limited to "those taxes which are essential to the functioning of the host State's licensing and registration laws in their application to the motor vehicles of nonresident servicemen." *Id.*, at 395. The Court held in *Buzard* that § 514 exempted servicemen from the California tax on automobiles, not because it *was* an excise tax on use covered by subsection (2)(b) but rather because it was *not* such a tax.[37] The so-called "license fee" there in question was an annual tax in the amount of 2% of the assessed market value of the car—a levy which was indistinguishable from the annually recurring ad valorem taxes that § 514 was designed to cover.[38]

It is thus evident that in subsection (2)(b) Congress was dealing solely with a unique form of state "tax"—the motor vehicle registration fee. Because such fees are not always clearly classifiable as property taxes,[39] servicemen would not be exempted from many of them by subsection (1) of § 514. Since annually recurring license fees raise much the same risk of double taxation to transitory military personnel as do property taxes, Congress evidently decided in 1944 to extend the exemption of § 514 to include motor vehicle registration fees as well as property taxes. From 1944 to 1962 the only

[37] See also *Snapp* v. *Neal*, 382 U. S. 397, 398: "We reverse on the authority of our holding today in *Buzard* that the failure to pay the motor vehicle 'license, fee, or excise' of the home State entitles the host State only to exact motor vehicle taxes qualifying as 'licenses, fees, or excises'; the ad valorem tax, as the Mississippi Supreme Court acknowledged, is not such an exaction."

[38] Indeed, the Court in *Buzard* emphasized that the tax had been adopted by California "as a substitute for ad valorem taxation of automobiles." 382 U. S., at 395, n. 9. California's sales and use taxes were not involved in that case.

[39] See *California* v. *Buzard*, 382 U. S. 386, 394, n. 8, for the various methods by which States impose registration or license fees on motor vehicles.

reference in § 514 to "use" of property was found in subsection (2)(b). And, in view of the narrow purpose of that subsection and the absence for 20 years of any other reference to "use" in § 514, we cannot believe the repetition of that word in the 1962 amendment—described by Congress as a mere clarification of the existing law [40]—can be deemed to have added all use taxes to the coverage of the statute. The 1962 amendment merely reflected the prior reference to the "use" of motor vehicles in subsection (2)(b).

Finally, we find unpersuasive the appellees' contention that, since the Connecticut use tax can be applied only with respect to personal property used within the State, its imposition on servicemen away from home cannot be squared with the declaration of § 514 that "personal property shall not be deemed to be located or present in or to have a situs for taxation in such State." That clause is modified by the opening words of the sentence—"[f]or the purposes of taxation in respect of the personal property." Section 514, therefore, does not in terms relieve servicemen from every state tax which is somehow dependent on the presence of personal property within the State. Rather, it provides only that a State cannot justify imposing the taxes to which § 514 was initially intended to apply—annually recurring ad valorem property taxes—on the ground of the property's presence within the State.

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[40] "This bill amends the tax immunity provisions of the Soldiers' and Sailors' Civil Relief Act . . . *so as to clarify* a situation which sometimes results in taxation contrary to the intent of the act. More specifically, the bill provides that where a serviceman is absent from his residence or domicile solely by reason of compliance with military or naval orders, *the tax immunity provision of existing law shall apply with respect to his personal property, or the use thereof,* within any tax jurisdiction other than his State of residence or domicile, regardless of where such serviceman may be located in compliance with such orders." (Emphasis supplied.) S. Rep. No. 2182, *supra*, n. 27, at 1.

This construction is confirmed by the explanation which Congress itself gave for the addition in 1944 of the language on which the appellees rely:

> "The purpose of the proposed legislation is to clarify the intent of section 514 of the Soldiers' and Sailors' Civil Relief Act . . . . When that provision of law was added to the act to relieve persons in service from liability of double taxation by being moved from one State to another under orders, it was intended that it should apply to personal-property taxes as well as to income taxes. As presently constituted, it primarily affects taxes in respect to income and other taxes based on residence or domicile, but it does not prevent the State of 'temporary residence' from taxing tangible personal property actually located in such State so long as the tax does not depend on residence or domicile. A few States have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdiction does not acquire a situs for taxation, but it has been held that section 514 of the act as now written does not affect the right of a State to assess personal-property taxes on property within its jurisdiction." [41]

The 1944 amendment, therefore, had only the limited purpose "to clarify" Congress' original intent to cover "personal property taxes on property," not to expand the exemption in a manner which would include sales or use taxes.

For these reasons we hold that § 514 of the Soldiers' and Sailors' Civil Relief Act does not exempt servicemen from the sales and use taxes imposed by Connecticut. Accordingly, the judgment is

Reversed.

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[41] S. Rep. No. 959, *supra*, n. 27, at 1.